

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, 'MISSISSIPPI

STATE OF MISSISSIPPI

V.

CAUSE NO. 2003-0071-CR

CURTIS GIOVANNI FLOWERS

TRANSCRIPT OF THE TESTIMONY ONLY HAD DURING THE TRIAL BEFORE

THE HONORABLE C. E. "CEM" MORGAN, III, CIRCUIT JUDGE, FIFTH

CIRCUIT COURT DISTRICT OF THE STATE OF MISSISSIPPI, AND A

JURY OF TWELVE MEN AND WOMEN DULY IMPANELED AND SWORN, WITH

THE TESTIMONY BEGINNING ON THE 29TH DAY OF NOVEMBER, 2007.

APPEARANCES:

Present and Representing the State:

HONORABLE DOUG EVANS

HONORABLE CLYDE HILL

HONORABLE MIKE HOWIE

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GRENADA, MISSISSIPPI 38902

Present and Representing the Defendant:

HONORABLE RAY CHARLES CARTER

HONORABLE ANDRE DE GRUY

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Reported by Linda F. Burchfield, CSR #1019

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1 Sam Jones - DIRECT
2 (STATE'S EXHIBITS S-1 THROUGH S-125B, WITH THE
3 EXCEPTION OF 76 THROUGH 79 WHICH NUMBERS WERE NEVER ASSIGNED
4 TO AN EXHIBIT, WERE PRE-MARKED FOR IDENTIFICATION PRIOR TO
5 THE BEGINNING OF THE TRIAL.)

6 (With the trial having begun on November 26, 2007,
7 and a jury having been selected and sworn to try the issues
8 and opening statements having been given by both sides,
9 proceedings continued in open court on November 29, 2007,
10 with all counsel, the Defendant, and the jury all present:)

11 (WITNESSES ENTER THE COURTROOM.)

12 BY THE COURT: Y'all turn around and Ms. Halfacre
13 will swear you.

14 (WITNESSES WERE SWORN BY THE CLERK.)

15 BY THE COURT: Who do you want first, Mr. Evans?

16 BY MR. HILL: Sam Jones will be first.

17 BY THE COURT: Mr. Jones, come have a seat over
18 here. The rest of you need to go back to wherever they
19 have you.

20 RULE INVOKED

21 SAM JONES, JR.,

22 upon being called to testify as a witness by the State of
23 Mississippi, having first been duly sworn, testified as
24 follows, to-wit:

25 BY THE COURT: State your name, please, sir.

26 BY THE WITNESS: Sam Jones Jr.

27 BY THE COURT: Okay, Mr. Jones, if you can, try to
28 speak as loud as you can so that these people over here
29 can hear you. All right?

 BY THE WITNESS: Yes.

Sam Jones, Jr. - DIRECT

1 BY MR. HILL: May I proceed, Your Honor?

2 BY THE COURT: Yes, sir.

3 DIRECT EXAMINATION BY MR. HILL:

4 Q. Good morning, Mr. Jones.

5 A. (No response.)

6 Q. I may need to speak up a little bit. Good
7 morning, Mr. Jones.

8 A. Good morning.

9 BY THE COURT: I don't think that amplifies.

10 BY MR. HILL: That isn't working.

11 BY THE COURT: You are just going to have to speak
12 up loud.

13 BY MR. HILL:

14 Q. Okay. Mr. Jones, if you can't hear me, you be
15 sure and let me know; okay? Mr. Jones, will you tell the
16 ladies and gentlemen where you live?

17 A. Beg your pardon? Speak a little louder.

18 Q. Yes, sir. Mr. Jones, tell the ladies and
19 gentlemen of the jury where you live, sir.

20 A. 302 Harper Street here in Winona.

21 Q. And how long have you lived there, Mr. Jones?

22 A. Since '55, 1955.

23 Q. Mr. Jones, you have been living here in Winona
24 since 1955; is that right, sir?

25 A. Living on, at that address. Of course, I was born
26 here in Winona.

27 Q. Okay. And how old are you now, Mr. Jones?

28 A. Eighty-seven.

29 Q. Mr. Jones, do you remember a place called Tardy

Sam Jones, Jr. - DIRECT

1 Furniture Store?

2 A. Do I remember it?

3 Q. Yes, sir.

4 A. Yes.

5 Q. Did you ever work there?

6 A. Yes.

7 Q. Would you tell the ladies and gentlemen of the
8 jury something about when you went to work for Tardy and how
9 long you worked there, please, sir?

10 A. I went to work there in the spring of uh, '42,
11 1942, and I worked there until this accident happened.

12 Q. Mr. Jones, I want to ask you, direct your
13 attention back to July the 16th, 1996, and ask did you go to
14 Tardy Furniture store that morning?

15 A. Yes, sir. I went there.

16 Q. Okay. Why was it -- were you still working full
17 time?

18 A. No, sir. I had retired, part time; partially
19 retired.

20 Q. Partially retired?

21 A. Yes.

22 Q. And what was it that caused you -- did anybody
23 call you and ask you to come in on that particular morning
24 of July the 16th, 1996?

25 A. Yes.

26 Q. Would you explain that to the ladies and
27 gentlemen, please?

28 A. Well, they called me -- see, I worked part time,
29 and they called me. I would go, in other words, I would go

Sam Jones, Jr. - DIRECT

1 down and help them do repair work and help them load out and
2 sometimes deliver. And if they had any, had to pick up
3 anything anywhere, I would go pick that up for them because
4 I was a truck driver down there. And I would go pick that
5 up for them. But I had partially retired.

6 Q. How long -- excuse me for interrupting, but about
7 how long was it that you worked up until July the 16th?
8 About how many years did you work for Tardy Furniture
9 Company?

10 A. Well, you have to figure that out there. I think
11 it was 40 something years. I believe that is right.

12 Q. All right, did I understand you to say that you
13 went to work for them in 1940, I mean '42?

14 A. In '42.

15 Q. You went to work for them--

16 A. -- the spring of '42.

17 Q. You went to work for them in '42--

18 A. -- until that time.

19 Q. And you were still working part time in 1996?

20 A. Yes.

21 Q. Okay. Who was it -- do you recall who called you
22 and asked you to come in on the morning of July 16th of '96?

23 A. Ms. Tardy.

24 Q. Okay. And did they have any new employees there,
25 Mr. Jones, that worked for Tardy on that particular day?

26 A. Say did they have?

27 Q. Any new people working for them, any new
28 employees?

29 A. Oh, yeah, had one -- three.

Sam Jones, Jr. - DIRECT

1 Q. Do you know who they were, sir?

2 A. One of them was uh, BoBo Stewart.

3 Q. BoBo Stewart.

4 A. Robert Golden and Curtis Flowers.

5 Q. Curtis Flowers.

6 A. Yes.

7 Q. Now how did, when the people that owned Tardy
8 Furniture Company, when they hire new employees, did you
9 ever make any recommendations to them about who they hired?

10 A. I made all of them for the department I worked in.
11 See, I run the shop up there up the street from Tardy's, and
12 everybody come in to the store there that works in that
13 department that I worked in, well, I recommended them,
14 everybody but Curtis. I didn't recommend him.

15 Q. You did not recommend Curtis?

16 A. No, sir.

17 Q. Did you know Curtis Flowers?

18 A. I knowed the family, but I tell you, and I knew
19 him. But I couldn't place him at the time of this, this
20 accident.

21 Q. All right. Now Mr. Jones, I take it then that you
22 had recommended BoBo Stewart?

23 A. Sir?

24 Q. I take it that you had recommended young BoBo
25 Stewart to work there?

26 A. I didn't exactly recommend him, but I spoke a good
27 word for him because I didn't know BoBo, but I knew his
28 family.

29 Q. Okay.

Sam Jones, Jr. - DIRECT

1 A. We was all good friends, and he played ball for
2 the high school.

3 Q. Right.

4 A. And I never did get to see him play, but I had
5 told Coach Greg that I was going with him because I drove a
6 bus over there along about that time.

7 Q. And what about Robert Golden? Did you recommend
8 him for a job there?

9 A. I recommended him, but I knew him all of his life.

10 Q. Now kind of getting back to that particular
11 morning, did you get a call that morning to see if you were
12 going to come in?

13 A. Yes.

14 Q. And do you remember who it was that called you
15 that morning?

16 A. Ms. Tardy.

17 Q. And what was the nature of the phone call? What
18 was that call about?

19 A. Well, she called me and asked me -- I had promised
20 her I would come down and help them load out a truck and go
21 on a delivery. And she called me to ask me about was I
22 coming down there. And I told her that I was. And then
23 about, that was about 15 minutes after 9:00, I think, when
24 she called, somewhere along in there.

25 Q. About what time did you get to the store that
26 morning, Mr. Jones?

27 A. I got to the store there, it was -- let me think
28 back there.

29 Q. Yes, sir. Take your time.

Sam Jones, Jr. - DIRECT

1 A. Yes. She called me around, it was a little after
2 9:00.

3 Q. Called you a little after 9:00.

4 A. A little after 9:00.

5 Q. All right, and what did you do after she called?

6 A. I got to the store; it was before -- it was right
7 at, between 9:15 and 9:30.

8 Q. Okay.

9 A. I will put it like that. It wasn't 9:30.

10 Q. Okay. You got to the store between 9:15 or right
11 around that time?

12 A. Yes.

13 Q. Okay. And the purpose of you going there was to
14 help those new employees load a load of furniture and
15 deliver it?

16 A. Yes, sir. That's right.

17 Q. How long had BoBo Stewart been working there?

18 A. I think it was about 3 days.

19 Q. BoBo?

20 A. BoBo. I think there is two -- it wasn't long, two
21 or three days. Yes. I had seen him on the truck several
22 times, but I think it was about three days, something like
23 that.

24 Q. Okay. Mr. Jones, I guess now -- when you parked,
25 did you park in front of the store when you got to the store
26 that morning?

27 A. Yes, sir. I parked at the second oak tree out
28 there on the side.

29 Q. All right, sir. And if you got to the store

Sam Jones, Jr. - DIRECT
1 around 9:15, what door did you go in?

2 A. Notice what, sir?

3 Q. What door? Did you go in the main front door?

4 A. In the front. I went in the front door.

5 Q. All right, sir. I want to show you a photograph.

6 (Mr. Hill shows a photograph to Defense Counsel.)

7 Q. Mr. Jones, one thing I need to ask you. I think
8 when you got up there, did you go any place -- when you got
9 up town that morning, did you go anywhere before you
10 actually went to Tardy's?

11 A. Yeah. I went up to Coast to Coast.

12 Q. Okay.

13 A. I stopped by Coast to Coast. I come in and I
14 stopped by Coast to Coast because I wanted to see George
15 Amos.

16 Q. Wanted to see who?

17 A. George Amos.

18 Q. Okay.

19 A. And I stopped at Coast to Coast.

20 Q. Did you talk to them, talk to whoever you needed
21 to?

22 A. I saw Jimmy Lee because George was gone on a
23 service call, and I saw, talked to Jimmy Lee Sanders.

24 Q. Okay. And I think -- I might have misled you a
25 little bit. It was, when you got to the store, that was
26 going to be closer on up to 10 o'clock, wasn't it?

27 BY MR. CARTER: Object to leading, Your Honor.

28 BY THE COURT: Overruled.

29 BY THE WITNESS:

Sam Jones, Jr. - DIRECT

1 A. Say when I got--

2 Q. Yes, sir. Let me ask you this, sir. When you did
3 get to the store and when you went in, will you tell the
4 ladies and gentlemen what it was that you saw when you got
5 in the store there. Just tell them a little bit about what
6 you noticed when you got in the store. What did you see?

7 A. When I got in the store?

8 Q. Yes, sir.

9 A. Well, when I first walked in the store, I looked
10 around, and I didn't see nothing but some furniture. But
11 after I walked about oh, from the door to down in there a
12 piece, well, I was looking to see Mr. Tardy over there in,
13 on the platform. That's where he usually be sitting when
14 you would go in there. He wasn't over there, and I kept
15 walking. I walked out about 5 more feet, and I heard this
16 funny noise there. And I said what was that; wonder what
17 was that. It was somebody -- it sounded like somebody was
18 trying to get their breath. And it shut off. I walked
19 another about five or six steps there, and I heard it again.
20 And then I started looking all around, and I didn't see
21 nobody, wasn't nobody standing up. And I walked on again
22 about five more feet, and just a little piece, and I saw
23 BoBo's head sticking out in the, in the alley, in the alley
24 there going down there.

25 Q. In the aisle there?

26 A. Yeah, the aisle. Sticking out about that far, and
27 so I speeded up then to run down there and see what was
28 wrong. And as I got just about there, I realized what the
29 noise was when I got there, and I stopped.

Sam Jones, Jr. - DIRECT

1 Q. What was that noise, Mr. Jones?

2 A. I stopped, looked down to him.

3 Q. At BoBo?

4 A. Yeah, at BoBo. And there was, the blood was
5 running over his eyes. You couldn't see them. And when
6 I -- every time his heart beat, blood covered his eyes over,
7 and when it would clear off, well, his eyes were looking at
8 me, and that's what hurt so.

9 Q. Did you see-

10 A. -- I don't want to talk no more about that.

11 Q. Yes, sir. Did you see anybody else, Mr. Jones?

12 A. I looked over there right beside of him; there
13 laid Carmen.

14 Q. Ms. Rigby?

15 A. She was laying right behind me, and I looked over
16 there to my left again, and Robert was sitting right at the
17 end of the counter where he, looked like he probably had
18 signed in. Of course, that's where the book was. But he
19 was leaning up against the counter.

20 Q. Standing up or what?

21 A. Sitting down.

22 Q. Sitting down?

23 A. Sitting down up against the counter, and this
24 hand, his right hand was laying right across there. Left
25 hand was out on the floor in that position.

26 Q. Yes, sir. Besides BoBo and Ms. Rigby, Carmen, and
27 besides Robert Golden, did you see anybody else in the
28 store?

29 A. I didn't see nobody else.

Sam Jones, Jr. - DIRECT

1 Q. Did you see Ms. Tardy at that time?

2 A. Oh, I saw her. Yeah, I saw her. Now she was
3 laying in the alley going towards her office.

4 Q. Yes, sir.

5 A. She was laying down in the alley going towards her
6 office.

7 Q. Okay.

8 (Mr. Hill shows more photographs to Defense
9 Counsel.)

10 BY MR. HILL:

11 Q. Mr. Jones, I want to show you some photographs, if
12 I may. The first one I have got here is State's Exhibit
13 number 2 for identification. Would you look at that and
14 tell us, Mr. Jones, is that the store that you went to on
15 the morning of July 16th, 1996, here in Winona, Mississippi?

16 A. Yes, that's exactly it.

17 Q. All right, sir.

18 BY MR. HILL: Your Honor, we would ask that S-2 be
19 received into evidence.

20 BY THE COURT: Any objection?

21 BY MR. CARTER: None.

22 BY THE COURT: Let it be admitted.

23 (PHOTOGRAPH PREVIOUSLY MARKED AS STATE'S EXHIBIT
24 S-2 FOR IDENTIFICATION WAS NOW RECEIVED IN EVIDENCE.)

25 BY MR. HILL: And Your Honor, I spoke with Defense
26 Counsel, and we have an enlargement of that photograph
27 that we have marked as S-2A, and I would ask that it be
28 received as well. It is an identical picture, just
29 enlarged so that the jury can see it.

Sam Jones, Jr. - DIRECT

1 BY THE COURT: And that is of the store; is that
2 correct?

3 BY MR. HILL: Yes, sir.

4 BY THE COURT: Any objection to that?

5 BY MR. CARTER: No objection.

6 BY THE COURT: Let that be marked also.

7 (PHOTOGRAPH ON LARGE BOARD PREVIOUSLY MARKED AS
8 STATE'S EXHIBIT S-2A FOR IDENTIFICATION WAS NOW RECEIVED IN
9 EVIDENCE.)

10 BY MR. HILL:

11 Q. Mr. Jones, I'm going to hold this up kind of
12 behind you a little bit. Would you turn around just a
13 little bit if you can, sir. This is a photograph. It has
14 been marked right down here, S-2A?

15 A. Yes.

16 Q. Is this the store that you worked at?

17 A. That's the store.

18 Q. Are the front doors of the store shown in that
19 photograph right there?

20 A. What you say?

21 Q. Are the front doors of the store shown in the
22 picture?

23 A. That's right. It's the same store all the way
24 across.

25 Q. Yes, sir.

26 A. When I saw it, or when I went there, it wasn't no
27 cars there, but the only difference is you got three cars
28 there--

29 Q. -- the cars, yes, sir. And I am just saying this

Sam Jones, Jr. - DIRECT

1 picture was taken after you got there, but this is the
2 picture of the store?

3 A. Yes, it's a picture.

4 Q. Thank you, sir. Mr. Jones, I think you said that
5 you -- let me ask you another question first. After you
6 went in and you saw the four people in the store.

7 A. Yes.

8 Q. Could you tell if any besides BoBo, were any of
9 them moving, or did any of them show any signs of life other
10 than BoBo Stewart?

11 A. BoBo was the only one showed life. The rest of
12 them were still. The rest of the three were still. Of
13 course, I looked back there at her, at Ms. Tardy. She was
14 laying still. Now I didn't test them, but I just saw her
15 from the counter, standing at the counter and looked back
16 down the aisle there and saw her. She was over there in the
17 mattress department there, was on her left. And of course,
18 they had the dinette department was over on her right, and
19 she was laying in the aisle there. And of course, now
20 Robert and Carmen, Carmen was right there beside of me, and
21 she wasn't moving. Robert was leaned, looked like he just
22 turned around and slid up against the counter, just like I
23 am sitting, but his left hand was on the floor.

24 Q. All right, sir. I have got some photographs that
25 I wanted to show you. First of all, I want to show you some
26 photographs. Give me just a second to kind of sort these
27 out for you a little bit here. Mr. Jones, I'm going to show
28 you State's Exhibit 13 and 26. These are two photographs,
29 13 and 26. Would you look at those two photographs,

Sam Jones, Jr. - DIRECT

1 Mr. Jones, if you would, please?

2 A. Yes.

3 Q. Mr. Jones, do you recognize what those photographs
4 show? Do you recognize the people in there?

5 A. I recognize the people. That is Carmen, Ms. Rigby
6 laying there by this shelf, and that's Robert laying in the
7 aisle. Of course, he wasn't in the aisle when I--

8 Q. -- You said he was sitting up when you first saw
9 him?

10 A. He was sitting up. He was in the same place, but
11 he was sitting up at the time when I first went in there.

12 Q. All right, Mr. Jones, other than the fact that
13 when you first saw Robert, he was sitting up against the
14 back, with his back to the counter, other than that, is that
15 the way you saw them that morning with your own eyes?

16 A. Yes. That's the way I saw them, and then you take
17 right there, I think that is her keys.

18 Q. You can see her keys on the floor?

19 A. Looked like her keys on the floor, yes.

20 Q. All right, sir. I want to show you then if I may,
21 this is State's Exhibit number 15. Would you look at that,
22 please?

23 A. Yes.

24 Q. Do you recognize that?

25 A. Yes, sir. I recognize it. That's her keys.
26 That's her keys there. She was moving or something. That
27 is her keys.

28 Q. All right, sir.

29 BY MR. HILL: Your Honor, I'm going to ask at this

1 *Sam Jones, Jr. - DIRECT*
2 time that State's Exhibit 15, the keys, and 13 and 26,
3 photographs of Ms. Carmen Rigby and Robert Golden that
4 the witness has identified, I ask that they be
5 received.

6 **BY MR. CARTER:** No objection.

7 **BY THE COURT:** Let them be admitted.

8 (PHOTOGRAPHS PREVIOUSLY MARKED AS STATE'S EXHIBITS
9 S-13, S-15 AND S-26 FOR IDENTIFICATION WERE NOW RECEIVED IN
10 EVIDENCE.)

11 **BY MR. HILL:** I'm going to ask further, Your
12 Honor, that 26A, 13A and 15A likewise as we agreed be
13 received into evidence.

14 **BY MR. CARTER:** No objection.

15 **BY THE COURT:** That is the enlargements?

16 **BY MR. HILL:** Yes, sir.

17 **BY THE COURT:** Okay. With no objection, let them
18 be admitted.

19 (ENLARGEMENTS OF PHOTOGRAPHS PREVIOUSLY MARKED AS
20 STATE'S EXHIBITS S-13A AND S-15A FOR IDENTIFICATION WERE NOW
21 RECEIVED IN EVIDENCE.)

22 (NOTE: There was not an enlargement marked as
23 S-26A.)

24 **BY MR. HILL:**

25 Q. Mr. Jones, I have got some other pictures. Look
26 at these, please, sir. I'm going to hand you State's 18 --
27 16, 18 and 19. These are just different photographs. Would
28 you look at those and see if you can tell us who that is
29 shown in those photographs, please, sir?

 A. That's Robert.

Sam Jones, Jr. - DIRECT

1 Q. Yes, sir.

2 A. That's him laying down on both of these. He was
3 sitting up when I saw him.

4 Q. Yes, sir. All of these are of Robert Golden?

5 A. Yes.

6 Q. Mr. Jones, were you related to Robert Golden in
7 any way?

8 A. Yes. We were cousins on his mother's side. I
9 didn't know that until this happened, and I found it out.
10 They was all -- his parents used to live, his grandfather
11 lived down on, oh, I forget the man's place now but down--

12 Q. Okay, so it turned out you were actually related
13 to Robert Golden?

14 A. Yes, I was actually related to him. I was talking
15 to another cousin of mine, and he was telling me. We was at
16 the funeral, I think, and he told me that we was all kin.

17 BY MR. HILL: All right, sir. Your Honor, I'm
18 going to ask that 16, 19 and 18 be received.

19 BY MR. CARTER: No objection.

20 BY THE COURT: Let them be admitted.

21 (PHOTOGRAPHS PREVIOUSLY MARKED AS STATE'S EXHIBITS
22 S-16, S-18 AND S-19 FOR IDENTIFICATION WERE NOW RECEIVED IN
23 EVIDENCE.)

24 BY MR. HILL: And Your Honor, just for record
25 keeping purposes, the enlargements would be 16, 18 and
26 19A.

27 BY MR. CARTER: No objection.

28 BY THE COURT: Let them be admitted.

29 (ENLARGEMENTS OF PHOTOGRAPHS PREVIOUSLY MARKED AS

Sam Jones, Jr. - DIRECT

1 STATE'S EXHIBITS S-16A, S-18A AND S-19A FOR IDENTIFICATION
2 WERE NOW RECEIVED IN EVIDENCE.)

3 BY MR. HILL:

4 Q. Mr. Jones, I want to show you a photograph that
5 has been marked State's Exhibit 17. Do you recognize that
6 photograph, sir, or what that photograph shows?

7 A. Yeah, I recognize it. But I see the blood, BoBo's
8 blood, I think. Yeah, it was BoBo's blood.

9 Q. Do you see a cap in the photograph?

10 A. Sir?

11 Q. Is there a cap shown in that picture?

12 A. That's his cap there. I know it's supposed to be
13 a cap there.

14 Q. Is that where -- who was laying?

15 A. That's where, that's the cap there. Of course,
16 when they picked him up, they left that cap there.

17 Q. Yes, sir.

18 A. They left the cap there.

19 Q. Okay, Mr. Jones, I'm going to take this from you
20 and ask that State's Exhibit 17 be received into evidence
21 and 17A.

22 BY MR. CARTER: No objection.

23 BY THE COURT: Let them be admitted.

24 (PHOTOGRAPH PREVIOUSLY MARKED AS STATE'S EXHIBIT
25 S-17 AND ITS ENLARGEMENT OF S-17A FOR IDENTIFICATION WERE
26 BOTH NOW RECEIVED IN EVIDENCE.)

27 BY MR. HILL:

28 Q. Again Mr. Jones, I'm going to hold this picture up
29 a little bit. You may have to turn around. This is State's

Sam Jones, Jr. - DIRECT

1 Exhibit 17. This is the picture that you just looked at
2 right there.

3 A. Yes.

4 Q. Can you see, can you see well enough to see right
5 up in there? Can you see that from where you are sitting,
6 sir?

7 A. Up in--

8 Q. Right here. Is that the cap you were referring
9 to?

10 A. That's the cap. That's his cap, BoBo's cap.

11 Q. That was BoBo's cap?

12 A. Yes.

13 Q. All right. Is that where he was laying when you
14 saw him when you came into the store?

15 A. No, sir. He was laying -- that cap was behind him
16 a little.

17 Q. Okay.

18 A. Yes, sir. That cap--

19 Q. -- But I'm talking about this general area where
20 all that--

21 A. It was in that general area; yes, sir. He was in
22 that general area right there.

23 Q. All right, sir. And you said he was still alive?

24 A. Yes, he was still alive.

25 Q. And did you notice anything, Mr. Jones, when you,
26 when you went in the store there, did you notice anything on
27 the floor beside in that area that stood out to you?

28 A. In that area?

29 Q. Around there, yes, sir. Well, I tell you what.

Sam Jones, Jr. - DIRECT

1 I'm leading you ahead a little bit. I forgot I haven't
2 showed -- oh, my goodness. That went under that desk.

3 (NOTE: Mr. Hill was referring to a photograph
4 that went under the desk. He later retrieved it.)

5 Q. I'm going to show you State's Exhibit number 10.
6 Would you look at that, please, sir. I'm also going to show
7 you State's Exhibit 23, Mr. Jones. If you would look at
8 that, please?

9 A. This is Ms. Tardy.

10 Q. Yes, sir.

11 A. She was laying in the aisle going towards her
12 office.

13 Q. Okay. You need to speak up a little bit so they--

14 A. -- Yes, sir. Ms. Tardy was laying in the aisle
15 going towards her office.

16 Q. All right, sir. Does that show her the way she
17 was laying when you saw her?

18 A. Yes, sir. That's the way she was laying. And now
19 that right there, I can't tell exactly what that was.

20 Q. Okay.

21 A. But that is a picture of down there. That's the
22 aisle going back towards the back office.

23 Q. Yes, sir. And who -- this is another picture we
24 haven't showed you yet, State's Exhibit number 14. Do you
25 recognize that?

26 A. Yes, sir. That's Ms. Carmen.

27 Q. All right.

28 A. Ms. Rigby.

29 Q. Yes, sir. Is that the way she was when you went

Sam Jones, Jr. - DIRECT
1 in the store that morning?

2 A. Yes, sir.

3 BY MR. HILL: I ask that State's Exhibits 10, 14
4 and 23 be received, Your Honor.

5 BY MR. CARTER: No objection.

6 BY THE COURT: Let them be admitted.

7 (PHOTOGRAPHS PREVIOUSLY MARKED AS STATE'S EXHIBITS
8 S-10, S-14 AND S-23 FOR IDENTIFICATION WERE NOW RECEIVED IN
9 EVIDENCE.)

10 BY MR. HILL: I don't see the blowups. I will do
11 that later. Court indulge me just one minute.

12 (Pause.)

13 BY MR. HILL:

14 Q. Mr. Jones, after you, after -- sir, after you went
15 in the store and you saw those four people laying there in
16 the floor of Tardy's, what did you do, Mr. Jones, after you
17 saw them there?

18 A. After I saw them, I looked at them, and I reached
19 for the telephone, but I didn't touch it. I said no, I
20 ain't calling. I ain't touching nothing in here, and I
21 headed for the door, went out and went up to Coast to Coast.
22 And I told, when I went in, the lady asked me could she help
23 me, and I told her yeah, call 911 and tell them to send the
24 police and an ambulance down here. I said, I don't know;
25 you might need two ambulances but get them down here as fast
26 as you can. So I turned around and come back down there,
27 come out and went back down there.

28 Q. When you got back down there, did you go back in
29 the store?

Sam Jones, Jr. - DIRECT

1 A. Not then.

2 Q. When did you go back in, sir?

3 A. When the police got there.

4 Q. Do you remember who the first officer was that--

5 A. The first officer was Mr. Hargrove.

6 Q. Chief Johnny Hargrove?

7 A. Chief Hargrove, yes.

8 Q. Did you go back in with him?

9 A. I went back in with him.

10 Q. All right, sir. And I'm not sure, but did you see
11 anything on the floor other than the people? Did you see
12 anything that caught your eye that might be important? And
13 let me show you a photograph here. Mr. Jones, I'm handing
14 you a photograph. This is State's Exhibit number 13, and
15 I'm going to point out to you in the foreground of the
16 picture. Did you see anything on the floor in that area
17 that you thought was important?

18 A. Uh, it wasn't in that area, but it's on this
19 picture.

20 Q. Okay. And what is that?

21 A. She don't have on but one shoe.

22 Q. Okay. And did you see anything, did you see any
23 tracks or anything in the store?

24 A. Any what?

25 Q. Tracks, footprints?

26 A. Tracks, no, sir. I didn't. But you see here.
27 Right there, she got on one shoe.

28 Q. One shoe, yes, sir.

29 A. Do you see her toes down there?

Sam Jones, Jr. - DIRECT

1 Q. Yes, sir. I do. Is that the way she was?

2 A. That's the way she was when I saw her. That
3 other -- you didn't ask me that though.

4 Q. Okay, where was -- did you see the other shoe?

5 A. Yes, sir. I saw it.

6 Q. Where was it at?

7 A. Down on the other floor, in the other store, other
8 side.

9 Q. Give me just one minute, Mr. Jones. Let me get
10 back to my notes here. (Pause.) Mr. Jones, in some of the
11 photographs, in some of the photographs that you showed us,
12 you pointed out some blood that was on the floor. Do you
13 remember that, sir?

14 A. Yes.

15 Q. Did you step in any of that blood?

16 A. No, sir.

17 Q. Are you certain that you didn't walk in any of the
18 blood on the floor?

19 A. I am certain I didn't. Of course, I didn't go --
20 when I walked to the corner, down the aisle, BoBo's head was
21 sticking out there.

22 Q. Yes, sir.

23 A. And I didn't go over close to his head. I bent
24 over, but I didn't go over where that blood was, in no part
25 where that blood was.

26 Q. Okay. Did you ever see any tracks in the blood on
27 the floor?

28 A. I didn't when I first went in.

29 Q. Well, my question was--

Sam Jones, Jr. - DIRECT

1 A. -- it was clear, but when we come back, the
2 police, me and the police come back in there.

3 Q. Yes, sir.

4 A. Well, there was a track in the blood over next to
5 the, where it went down. See, it's a ramp there that goes
6 down there, and right where you go down that ramp, somebody
7 had stepped in that blood.

8 Q. Okay, and what I was getting to, you wasn't the
9 one that stepped in the blood, were you?

10 A. I wasn't the one that stepped in it.

11 Q. And you didn't make those tracks?

12 A. Yes. I didn't go over that, over on that side.
13 In other words, I come down where BoBo was, and then I
14 stayed on this side of the counter. I didn't go on that
15 side of the counter where Ms. Tardy was laying. I didn't go
16 over there.

17 Q. Okay. All right, sir.

18 A. At all, because you had to go through the blood to
19 get over there. And I could -- after I looked at her, I
20 could tell she was dead because she wasn't moving, and I
21 stayed on this side of the counter.

22 Q. Okay.

23 A. Yes.

24 BY MR. HILL: Indulge me one minute, Your Honor.
25 (State's Counsel confer.)

26 BY MR. HILL: Your Honor, at this time I'm going
27 to ask that I be allowed to pass the photographs that
28 have been admitted into evidence to the jury for their
29 viewing, please.

Sam Jones, Jr. - DIRECT

BY THE COURT: You may do that.

BY MR. HILL:

Q. Mr. Jones, I need to ask you something else, sir. After you went in the store the first time and saw the people laying there, that's when you heard BoBo making those noises?

A. Yes.

Q. About how long were you in the store approximately? I am just asking for a general approximation.

A. It wasn't over ten, I would say 10 to 15 minutes. I wasn't no--

Q. You didn't hang around in there long, did you?

A. No, sir. I didn't hang around in there long.

Q. And after you left there, where did you go?

A. Up to Coast to Coast. That was two doors, the third door up the street. See, you go, Liberty Cash was next door, and then Mr. Tardy had another store up there on the corner. And across the alley, I went in there, the third.

Q. Did you walk or run up to Coast to Coast?

A. I walked.

Q. Okay. I bet you were kind of walking hurriedly though, weren't you?

A. Yes, sir. I was walking in a hurry.

Q. Yes, sir. And you just stuck your head in there and told that lady, Ms. Garrett, to call the ambulance?

A. I went in, halfway down the aisle there.

Q. Oh, okay.

Sam Jones - DIRECT - CROSS

1 A. And told her. Then I turned around there, and she
2 went to the telephone.

3 Q. Did you wait in the store, or did you go right
4 back?

5 A. I went back down to Liberty Cash. I went down in
6 front of, right below -- well, between Liberty Cash and our
7 store.

8 Q. I see.

9 A. I didn't go back down there to--

10 Q. And did you see Chief Hargrove when he came up?

11 A. Yes, sir. I saw him.

12 Q. Okay. It didn't take him long to get there, did
13 it?

14 A. No, sir. It didn't take him long.

15 BY MR. HILL: Your Honor, I'm going to tender the
16 witness for cross-examination at this point.

17 CROSS-EXAMINATION BY MR. CARTER:

18 Q. Good morning, Mr. Jones.

19 A. Morning.

20 Q. Sir?

21 A. Huh?

22 Q. Did you hear me?

23 A. Yes. Yeah, I heard you.

24 Q. When you got to Tardy's that morning, were the
25 lights on?

26 A. Say was the lights on?

27 Q. Yes, sir.

28 A. Say when I got there, was the lights on?

29 Q. Yes, sir.

Sam Jones - CROSS

1 A. Oh, yeah. Yes, the lights were on.

2 Q. Throughout the store? In the whole store?

3 A. Now I don't know whether -- yeah, more than
4 likely, it was throughout the whole store.

5 Q. Now you said that day Mr. Tardy wasn't there; is
6 that correct?

7 A. Uh-uh. He wasn't; no, sir.

8 Q. He wasn't there?

9 A. No, sir. He wasn't there.

10 Q. And was he normally there?

11 A. Yes. Every time I had been down there, well, he
12 would be there. You ever been in the store?

13 Q. No, sir.

14 A. Well, okay. When you walk in the door, you have
15 got a platform over on the south side of that department of
16 the store. And he had an old recliner chair; it was about a
17 hundred years old there that I had repaired that chair for
18 him up at the shop, and he would be sitting in that chair.
19 And when people come in, well, he had got where he couldn't
20 see good. And he would find out who they was. He liked to
21 talk with them and find out who they was and everything, and
22 that's where he would usually be sitting. When I walked in,
23 well, he wasn't sitting there, and I just kept walking. And
24 when I got a little further, well, I heard this noise.

25 Q. Okay. At that point did Mr. Tardy actually do any
26 work at the store, or did he just come and sit and greet
27 people as they come in?

28 A. Well, he didn't do no work down there. He never
29 did do much work down there. He come down there.

Sam Jones - CROSS

1 (Laughter) He would come down there, and he just got to the
2 place he'd just come down there and sit around.

3 Q. Okay. Do you know who usually turned the lights
4 on in the morning? Was it anybody particular? Did anybody
5 in particular was responsible for turning on the lights in
6 the morning?

7 A. No, they, nobody particular. Whoever get in there
8 first, they would turn on the lights or turn on what lights
9 they needed.

10 Q. Okay. Now when you came to the store that
11 morning -- well, first of all, do you know Curtis Flowers?

12 A. Huh?

13 Q. Do you know Curtis Flowers?

14 A. Say do I know him?

15 Q. Yes, sir.

16 A. Yeah, I know him.

17 Q. Do you know his family?

18 A. Yeah, I know his family.

19 Q. Okay.

20 A. I -- well, let me correct something there. Now
21 you say I know his family. I know his mother and his
22 father, his sisters and his brother. But sometimes that you
23 could be close to one part of the family, and if you don't
24 see the others, the other part, you will forget them. Now I
25 couldn't place Curtis until I was over to his, over to his
26 house working on a dryer, and she showed me Curtis. That is
27 when the first trial was, when this thing first started.
28 That's how I saw him. When I saw him, well, I knew then who
29 he was. Uh-huh.

Sam Jones - CROSS

1 Q. Now on the day that the killings took place, on
2 your way to the store, you didn't see Curtis Flowers
3 anywhere, did you?

4 A. No, sir.

5 Q. Now there are several stores on Front Street right
6 there by Tardy's; is that correct? There was a Coast to
7 Coast there. There was a Liberty Cash, and I believe there
8 was a few other businesses right up the street from Coast to
9 Coast; is that correct?

10 A. That's right. Yes.

11 Q. And also behind there is also a street. Some
12 people call it an alley that runs right behind Tardy's and
13 Coast to Coast and Liberty and all that. Is that correct?

14 A. That's right.

15 Q. And there are actually some businesses or there
16 were back then, some businesses open there. Wasn't there a
17 building right behind Tardy's that fixed tires or did some
18 kind of work?

19 A. Yeah, Weed Brothers.

20 Q. Weed Brothers, okay.

21 A. Yes.

22 Q. Is that where Jimmy Sanders worked?

23 A. No, Jimmy worked up the street further, right up
24 the street from there at Coast to Coast. See, Coast to
25 Coast had a store on the front; the tire shop was on the
26 back.

27 Q. Okay.

28 A. And that's where they sold appliances, and George
29 Amos was, he worked in the appliance department.

Sam Jones - CROSS

1 Q. Okay. So Coast to Coast had a business right
2 there on Vine Street or that alley right behind Tardy's.
3 Weed Brothers had a store there. Were there any other
4 businesses right--

5 A. See, when you get to the, right at the back of
6 Tardy's, the alley went right up the street. Well, Weed
7 Brothers was the first building over there, and then the
8 next was a tire shop that belonged to Coast to Coast. Then
9 you are right at the alley there then.

10 Q. Okay. When you say right at the alley, there is a
11 street that runs?

12 A. Yeah, see, the alley come all the way from over at
13 Church Street out to Front Street.

14 Q. Right. Now on the day that these killings took
15 place, did you see the police department or the sheriff's
16 department asking people to take off their shoes so that
17 they could look at their soles?

18 A. Say, do what now?

19 Q. Did you see Police Chief Hargrove or Sheriff
20 Thornburg or any other police officers or sheriff deputies
21 asking people who had been into the store to take off their
22 shoes or let them look at the sole of their shoes? Did you
23 see any of that going on?

24 A. No, I didn't see them asking nobody else.

25 Q. Okay, did--

26 A. --but they got looking, they got mine.

27 Q. They got yours, okay.

28 A. Yeah, uh-huh.

29 Q. Now let me see if I can help you out a little.

Sam Jones - CROSS

1 You said that when you first went into Tardy's, you believe
2 you stayed like 10 or 15 minutes?

3 A. Yeah.

4 Q. Now 10 or 15 minutes is a, is quite a period of
5 time, believe it or not. More than likely, is it fair to
6 say that you really didn't stay that long? As you think
7 about it, if you had to look at your watch and count to 10
8 or 15 minutes, is it fair to say that you probably didn't
9 stay in there that long, or do you know?

10 A. I didn't look at my watch standing there. I just
11 went in there, you know, just to, looked at each one of
12 them.

13 Q. And came out?

14 A. And then I left out to go get help for them.

15 Q. Okay. Do you remember what route you took that
16 day?

17 A. Yeah.

18 Q. Can you tell us what roads you took to get there?

19 A. To get to the store?

20 Q. Yes, sir.

21 A. Yeah. Do you want to know that?

22 Q. Oh, yeah, tell us.

23 A. Okay. I come up -- I live on Harper Street.

24 Q. Yes, sir.

25 A. Harper to Campbell, Campbell to Applegate,
26 Applegate back to -- I'm going too fast for you?

27 Q. No, go ahead.

28 A. Applegate back to Summit; Summit down to Front;
29 Front down to the second tree in front of the store out

Sam Jones - CROSS

1 there of Tardy's.

2 Q. Okay. And you didn't see Curtis Flowers or
3 anybody?

4 A. Uh-uh.

5 Q. Running from the store or walking anywhere near
6 that store?

7 A. Uh-uh. I didn't see nobody after I come down and
8 got on Carrollton. I didn't see nobody on Carrollton. I
9 stayed on Carrollton until I got right behind the store, and
10 then I went up to, that alley there to the tire shop. And I
11 talked to Jimmy Lee Sanders. He told me that George was out
12 on a service call. And he tried, he told me, say, "Just go
13 on over there and park; he will be back." And I said, "No,
14 I am going down here and get through with that. When I get
15 through with that, I will come back by here" because I had
16 retired from down there, and I had done a little work on the
17 side myself.

18 Q. Now you didn't see any vehicles parked in front of
19 Tardy's on Front Street? Is that what you are saying?

20 A. Say do what?

21 Q. Did you see any vehicles parked in front of
22 Tardy's or even on Front Street?

23 A. No, sir; wasn't nobody parked on -- I don't know
24 what was up the street because I didn't see nothing coming,
25 and I come out and went down. And it wasn't nothing parked
26 down there on the south side. But it had -- and I parked my
27 truck, I think it was about the second oak tree out there in
28 front of the store.

29 Q. Okay. And how long did you stay up at Tardy's in

Sam Jones - CROSS

1 that area there? Do you remember? Were you there pretty
2 much all day or?

3 A. I stayed down there all day, the rest of the day
4 just about. But I didn't stay in the store there. After I
5 went in and saw what had happened, and I left out to go get
6 help because it wasn't nothing I could do, that I could do.

7 Q. Yes, sir. And after you came back down to next
8 door to Tardy's and Mr. Hargrove came up and some other
9 people came up, did you happen to see a brown and tan car or
10 a brown car on the other side of Front Street and two
11 individuals talking or having a discussion or a heated
12 exchange or something like that?

13 A. Say did I happen to see it?

14 Q. Did you see a brown car? Do you know Doyle
15 Simpson?

16 A. Know who?

17 Q. Doyle Simpson?

18 A. Yeah.

19 Q. Okay. Now while you were there, about what time
20 did you go home that day? Do you remember?

21 A. Say I went home?

22 Q. What time did you leave the Tardy area and, or
23 Front Street? What time did you leave that day, as best you
24 can recall?

25 A. Oh, I think I went to -- now on this, I'm just
26 thinking about it. I think I come home, went home to lunch
27 somewhere around 12 o'clock, but I come right back down
28 there about an hour after.

29 Q. Okay. Now during that morning, you didn't see

Sam Jones - CROSS

1 Doyle Simpson anywhere around the place, or did you see him?

2 A. Uh-uh; no, sir. I didn't see him.

3 Q. And you certainly didn't see Curtis Flowers at any
4 point that day down on Front Street; is that correct? Or
5 did you? You didn't see Curtis Flowers any time that day
6 either, did you?

7 A. No, I didn't see him either.

8 Q. Do you recall even seeing anyone in a brown car
9 with two people standing near it and arguing or fussing at
10 each other?

11 A. No, sir. I didn't see that.

12 Q. You didn't see that? Now the tracks that you --
13 the bloody track that you saw, did you see that the first
14 time you went in the store, or did you see it the second
15 time?

16 A. See what now?

17 Q. The bloody footprint. Did you see it the first
18 time you went--

19 A. -- the second time.

20 Q. --into the store or the second time?

21 A. Second time.

22 Q. Okay, thank you. Now Mr. Jones, you didn't ask
23 any of the neighbors, the neighboring businesses or the
24 people who work there if they had seen anybody in the area,
25 did you? You didn't help do any kind of investigation, did
26 you?

27 A. Uh, say that again now.

28 Q. Okay. I'm probably confusing you, but if I
29 understand, if I am understanding correctly, once Mr.

Sam Jones - CROSS - REDIRECT

1 Hargrove got to Tardy's, did you go back -- you went back in
2 the store with Mr. Hargrove; is that correct?

3 A. That's right.

4 Q. Okay. Did you also go to Coast to Coast or Weed
5 Brothers or any other place and ask anyone if they saw or
6 heard anything going on in Tardy's? You didn't do any of
7 that, did you?

8 A. Uh-uh.

9 Q. Okay. One moment.

10 (Defense Counsel confer.)

11 BY MR. CARTER: No more questions.

12 BY THE COURT: Any redirect?

13 REDIRECT EXAMINATION BY MR. HILL:

14 Q. Mr. Jones, while ago when the defense attorney was
15 asking about your shoes?

16 A. Yes.

17 Q. That the officers checked your shoes?

18 A. Yes.

19 Q. I think you said they looked at your shoes or
20 something like that? The police officers, to see if there
21 was any blood on them? Is that what you were talking about
22 when you said they took your shoes or checked your shoes?

23 A. Say what now?

24 Q. Did any -- after the police got there, did they
25 ever look at your shoes or check your shoes?

26 A. Yes.

27 Q. To make sure there was no blood on them?

28 A. Yes.

29 Q. Okay. That's all.

Sam Jones - REDIRECT

1 A. They wanted to check them, and in fact, they did
2 get them, but they give them back to me.

3 Q. Oh, they took your shoes?

4 A. They took them. Of course, my, the track in my
5 shoes didn't match the track over there in that blood in the
6 first place.

7 Q. Yes, sir. Thank you, sir.

8 BY MR. HILL: Nothing further, Your Honor.

9 BY THE COURT: Is he finally excused?

10 BY MR. CARTER: Yes, sir.

11 BY MR. HILL: Yes, sir.

12 BY THE COURT: Mr. Jones, you are excused, and you
13 are finally excused. You can leave if you would like.

14 BY THE WITNESS: Say what?

15 BY THE COURT: You can go home if you would like.

16 BY THE WITNESS: Yes. All right.

17 WITNESS EXCUSED.

18 BY THE COURT: Who will you have next?

19 BY MR. EVANS: Chief Hargrove.

20 JOHNNY HARGROVE,

21 upon being called to testify as a witness by the State of
22 Mississippi, having first been duly sworn, testified as
23 follows, to-wit:

24 BY THE COURT: State your name, please, sir.

25 BY THE WITNESS: Johnny Hargrove.

26 BY MR. EVANS: May I proceed, Your Honor?

27 BY THE COURT: Yes.

28 DIRECT EXAMINATION BY MR. EVANS:

29 Q. How are you employed?

Johnny Hargrove - DIRECT

1 A. City of Winona.

2 Q. In what capacity?

3 A. Chief of Police.

4 Q. All right, Chief, how long have you actually been
5 working for the Winona Police Department?

6 A. Almost 20 years.

7 Q. And how long have you been chief?

8 A. A little over 11 years.

9 Q. I want to direct your attention back to the
10 morning of July the 16th, 1996, and ask you if you were
11 Chief of Winona at that time?

12 A. Yes, sir.

13 Q. Were you working that morning?

14 A. Yes, sir.

15 Q. Did you receive an unusual call that morning?

16 A. Yes, sir. I did.

17 Q. What time was that?

18 A. About, a little after 10:00.

19 Q. Okay. Now do you have the exact time with you?

20 A. It's about, it was about 10:20 something,
21 somewhere in there.

22 Q. Okay. What was the nature of that call?

23 A. There was some people laying in the floor at
24 Tardy's.

25 Q. And who called you?

26 A. The dispatcher. I received it over the radio.

27 Q. All right. Where were you in your vehicle when
28 you received the call?

29 A. Coming off of Greenlee.

Johnny Hargrove - DIRECT

1 Q. Can you give the jury any idea of about how long
2 it took you to get to Tardy's?

3 A. Less than a minute.

4 Q. Where did you pull your vehicle?

5 A. In front of the store.

6 Q. Okay. And can you tell us what you did once you
7 got to the store?

8 A. I went inside.

9 Q. Did you observe anything inside the store?

10 A. Yes, sir. I seen, when I first walked through the
11 door, I seen Ms. Tardy laying in the floor, in the aisle
12 way.

13 Q. Can you describe where she was?

14 A. She was laying in the aisle. Face down.

15 Q. Toward the front of the store? The back of the
16 store?

17 A. The back of the store.

18 Q. Okay. How was she laying?

19 A. She was laying face down.

20 Q. Okay. What else did you observe?

21 A. When I walked on back there where, closer where
22 she was, I got close to the counter. That's when I seen the
23 rest of them laying in the floor.

24 Q. And who were they?

25 A. Robert Golden, Ms. Rigby, and BoBo Stewart.

26 Q. Did you have time to check to see what the
27 condition of these people were?

28 A. Stewart, he was still breathing.

29 Q. And how do you know that?

Johnny Hargrove - DIRECT

1 A. He was, he was laying in blood, and he was
2 gurgling like, a sound.

3 Q. Chief, what did you do when you walked in and saw
4 these four people laying in the store?

5 A. I backed back out of the store, and I went to my
6 vehicle and called for back up and told them to send
7 MedStat.

8 Q. How long did it take before you got back up?

9 A. Sir?

10 Q. How long did it take before you got some back up
11 there?

12 A. It was -- I was still standing by the car, and by
13 that time, it didn't take long before Sheriff Thornburg and
14 MedStat pulled up almost at the same time.

15 Q. Did you see Sam Jones there that morning?

16 A. Yes, sir.

17 Q. Did you -- well, approximately how long after you
18 had first seen the bodies on the floor was it when you went
19 back in the store?

20 A. After I came out and I called for back up and all
21 that, that's when I seen Mr. Jones walking down towards my
22 vehicle.

23 Q. Okay.

24 A. It was less than a minute.

25 Q. All right. Who went back in the store at that
26 point?

27 A. At that point myself, MedStat, Mr. Jones and
28 Sheriff Thornburg.

29 Q. Chief, did you notice anything that you considered

Johnny Hargrove - DIRECT

1 evidence in the store when you walked back in?

2 A. The second time I went back in was, you know, I
3 seen a shoe print which, like somebody had stepped in blood.
4 A blood print.

5 Q. What did you do to preserve that print?

6 A. At that time I made sure didn't nobody step over
7 there, and I checked the footprints of the other people that
8 were in there, what kind of shoes they were wearing.

9 Q. All right, did you check the shoes of everyone
10 else that was in there at that time?

11 A. Yes, sir.

12 Q. Who was that?

13 A. It was the two guys from MedStat, and I think
14 Sheriff Thornburg was in there, and Mr. Jones, he was there.

15 Q. And I am assuming you checked your own shoes?

16 A. Yes, sir.

17 Q. Did any of the shoes of the people that were in
18 there have any similarity to the bloody shoe tracks that you
19 saw?

20 A. No, sir.

21 Q. What did you do next, Chief?

22 A. After they put BoBo on the stretcher and they went
23 out, we started securing the scene.

24 Q. Okay. BoBo was removed from the scene?

25 A. Yes, sir.

26 Q. By MedStat?

27 A. Yes, sir.

28 Q. Where was he carried?

29 A. I think he was carried to Tyler Holmes.

Johnny Hargrove - DIRECT

1 Q. Were any of the other bodies removed at that time?

2 A. No, sir.

3 Q. Why not?

4 A. They were deceased.

5 Q. Chief, did you have a chance to observe enough at
6 that time to be able to make a determination of what had
7 caused their death?

8 A. They appeared to be shot in the head.

9 Q. Did you notice any type of projectiles, hulls at
10 the scene?

11 A. After the lady from the crime lab got there, we
12 seen hulls there.

13 Q. Do you know what caliber they were?

14 A. Not right offhand.

15 Q. Did you actually work the crime scene, or did you
16 ask someone else to do that?

17 A. The investigators from the highway patrol. They
18 worked it.

19 Q. And you have talked about the crime lab. Did a
20 crime scene unit come up?

21 A. Yes, sir.

22 Q. At whose request?

23 A. I called them.

24 Q. Chief, can you kind of describe this downtown area
25 where Tardy's was located and what it looked like and was
26 like at that time, as far as what businesses were around and
27 where?

28 A. Well, you had Coast to Coast was open. You had
29 Stay at Home, and you had Winona Dry Cleaners.

Johnny Hargrove - DIRECT

1 Q. Where was Stay Home located?

2 A. It was, it's going to be south of it, right on the
3 side of it.

4 Q. Okay. And Coast to Coast, where was that located?

5 A. It's going to be north of it.

6 Q. Was there any business actually next to Tardy
7 Furniture that was open?

8 A. No, sir. Liberty Cash and the other building,
9 they were closed.

10 Q. Chief, in what city, county and state is Tardy
11 Furniture located?

12 A. The City of Winona, Montgomery County, State of
13 Mississippi.

14 BY MR. EVANS: May I have the Court's indulgence.

15 (Mr. Evans shows photographs to Defense Counsel,
16 and they confer.)

17 BY MR. EVANS: Any objection to these?

18 BY MR. DE GRUY: No objection, Your Honor.

19 BY THE COURT: Okay, to what?

20 BY MR. EVANS: Your Honor, the State has a group
21 of photographs I would move into evidence before I
22 proceed.

23 BY THE COURT: Would you identify them for the
24 record.

25 BY MR. EVANS: Yes, sir, and they are probably not
26 in the regular order, but I will just go through them
27 as they are. S-1 --excuse me, Your Honor. S-3, S-4,
28 S-5, S-1, S-20, S-30, S-21, S-24, S-25, S-12, S-22, and
29 S-11.

Johnny Hargrove - DIRECT

1 **BY THE COURT:** Okay, with no objection, let them
2 be admitted.

3 (PHOTOGRAPHS PREVIOUSLY MARKED FOR IDENTIFICATION
4 AS STATE'S EXHIBITS S-1, S-3, S-4, S-5, S-11, S-12, S-20,
5 S-21, S-22, S-24, S-25, AND S-30 WERE NOW RECEIVED IN
6 EVIDENCE.)

7 **BY MR. EVANS:** Your Honor, I also have four
8 enlargements of some of these that I would offer into
9 evidence, being S-5A, S-1A, S-3A, and S-4A. That's it.

10 **BY THE COURT:** No objection to that?

11 **BY MR. DE GRUY:** No objection.

12 **BY THE COURT:** Okay. Let them be admitted.

13 (ENLARGEMENTS OF PHOTOGRAPHS PREVIOUSLY MARKED FOR
14 IDENTIFICATION AS STATE'S EXHIBITS S-1A, S-3A, S-4A AND S-5A
15 WERE NOW RECEIVED IN EVIDENCE.)

16 (Mr. Evans and Mr. De Gruy confer.)

17 **BY MR. EVANS:**

18 Q. Chief, I want to hand you these photographs that
19 were just marked into evidence, and if you would, take them
20 one at a time; flip them over and look, call out the number
21 on the back; and tell us what each photograph shows.

22 A. This one is showing the buildings downtown,
23 Liberty Cash and Coast to Coast.

24 Q. What number is it?

25 A. Looks like S-3. I don't have my glasses on.

26 Q. Okay.

27 A. The other picture, it is still showing part of
28 downtown and showing the vehicles parked in, in the parking
29 spaces. It is going to be S-4.

Johnny Hargrove - DIRECT

1 This one is showing the cleaners. S-5.

2 Q. Okay.

3 A. And this one is showing the floor that is inside
4 the Tardy's building, which is S-20.

5 This one here is showing Ms. Rigby and Robert
6 Golden by the counter. It is S-30.

7 This one is showing Ms. Bertha where she was
8 laying in the floor with her legs beside her, some of the
9 furniture in the store. It's S-21.

10 This one is showing Ms. Tardy and BoBo Stewart's
11 cap. S-24.

12 And this is showing where Stewart was laying, his
13 cap by the furniture. S-25.

14 This one is showing Stewart's cap and Ms. Rigby's
15 legs. S-12.

16 This one shows Ms. Tardy. S-22.

17 And this one is showing Ms. Rigby and Ms. Tardy in
18 the aisle way in the store. S-11.

19 And this one, it is showing the outside of the
20 building, the vehicles parked in the parking lot where it's
21 roped off. It's S-1.

22 Q. All right, Chief. All of those photographs that
23 you have just described, other than the fact that BoBo had
24 been removed from the scene by the ambulance, do all of
25 those other photographs truly and accurately depict the
26 scene as you saw it that morning?

27 A. Yes, sir.

28 Q. And the spot on the photographs that shows a
29 puddle of blood with no one there and a cap, who was laying

Johnny Hargrove - DIRECT

1 there?

2 A. BoBo Stewart.

3 BY MR. EVANS: Your Honor, may I pass these to the
4 jury as I continue?

5 BY THE COURT: They have been admitted.

6 (The small photos referred to above were passed to
7 the jury.)

8 BY MR. EVANS:

9 Q. Chief, can you see this from where you are?

10 A. Yes, sir.

11 Q. This S-A1, what does it show?

12 A. It shows, showing the front of Tardy's and the
13 parking spaces and the Stay Home building.

14 Q. All right.

15 A. And part of the cleaners.

16 Q. Is this the Stay Home building that you have
17 described?

18 A. Yes, sir.

19 Q. And Tardy's is over in this area; is that right?

20 A. Yes, sir.

21 Q. Where did you pull that morning?

22 A. Pulled, I pulled in front of Tardy's.

23 Q. Right in front of Tardy's over here?

24 A. Yes, sir.

25 Q. What street runs beside Tardy's on this side?

26 A. Carrollton.

27 Q. Carrollton?

28 A. Yes, sir.

29 Q. Chief, I will show you SA-5 and ask you if you can

Johnny Hargrove - DIRECT

1 tell us what this picture shows? Can you see it from where
2 you are?

3 A. It is showing the cleaners and Carrollton Street.

4 Q. Okay, this is Carrollton Street that is running
5 down through this way?

6 A. Yes, sir.

7 Q. Where would Tardy's Furniture be?

8 A. It is going to be Tardy's on the brick part.

9 Q. So you can see the outer wall of Tardy's?

10 A. Tardy's. The side of Tardy's, yeah.

11 Q. Okay. S-4A, can you point out what this shows,
12 Chief?

13 A. That's still going to be in the front of Tardy's.
14 That's where some of the people parked when they worked at
15 the cleaners.

16 Q. Okay. What businesses are shown in this
17 photograph if you can tell?

18 A. You have got Coast to Coast, and that's that empty
19 building beside it.

20 Q. If you don't mind, step down.

21 BY MR. EVANS: May he step down, Your Honor?

22 BY THE COURT: Uh-hum.

23 BY MR. EVANS:

24 Q. Just point out for the jury where Tardy Furniture
25 is on here.

26 A. Tardy's is going to be down from the store here.

27 Q. On further down than the photograph?

28 A. Yes, sir.

29 Q. Where is Coast to Coast?

Johnny Hargrove - DIRECT

1 A. Coast to Coast, right here.

2 Q. Okay, this is Coast to Coast. What is in this
3 building?

4 A. That was an empty building.

5 Q. So it was empty. No business at all in it at that
6 time?

7 A. Uh-uh.

8 Q. All right, thanks, Chief.

9 (Witness resumes the witness stand.)

10 Q. And 3A, Chief. This may be a little clearer than
11 the last one. Can you point out where Coast to Coast is on
12 here?

13 A. Right here. (Pointing)

14 Q. And the building next to it was what?

15 A. It was closed. And then you had Liberty Cash.

16 Q. And what was in there?

17 A. It was closed too.

18 Q. So both of the buildings between Tardy's and Coast
19 to Coast were empty buildings that were closed at that time?

20 A. Yes, sir.

21 Q. All right. What investigators did you call in to
22 assist on this case, Chief?

23 A. We called in your office, the state highway
24 patrol.

25 Q. All right, so both the District Attorney's Office
26 and the Highway Patrol were called for assistance?

27 A. Yes, sir.

28 Q. And did you actually take part in any of the crime
29 scene investigation, or did you just protect the scene and

Johnny Hargrove - DIRECT

1 observe while that was being done by the crime lab?

2 A. Just protected the scene.

3 BY MR. EVANS: One minute, Your Honor.

4 Q. Chief, this diagram or chart has Exhibits 16A,
5 18A, 17A and 19A on it. Would you step down, please.

6 A. (Witness complies.)

7 Q. What do these each show?

8 A. That's the one showing Robert Golden, where he was
9 laying beside the counter.

10 Q. All right, now where is the store counter?

11 A. It's going to be on most, to the back of the
12 store.

13 Q. All right, and in relationship to that picture,
14 can you see the store counter?

15 A. That's going to be the counter area.

16 Q. All right, so the counter is right behind where
17 Robert Golden was laying?

18 A. Yes, sir.

19 Q. Was he laying like that when you walked in the
20 store?

21 A. Yes, sir.

22 Q. Okay. Exhibit, that was Exhibit 16A. 17A, what
23 does this show?

24 A. It's going to show almost the same picture but at
25 a different angle of the counter.

26 Q. All right, do you see Robert Golden in that
27 picture?

28 A. Yes, sir.

29 Q. And is this the same counter that you see behind

Johnny Hargrove - DIRECT

1 him here?

2 A. Yes, sir.

3 Q. Okay. Do you know whether that store had a cash
4 drawer in it or not?

5 A. Yes, sir. It was back behind there somewhere.
6 Somewhere in there.

7 Q. Okay, it was in the counter area?

8 A. Yes, sir.

9 Q. Did you check it, or did the other investigators
10 check it?

11 A. The other investigators checked it.

12 Q. Do you know whether the store had a safe or not?

13 A. No, I don't.

14 Q. What does Exhibit 18A show, Chief?

15 A. It's going to show Robert Golden, where he was
16 laying beside the counter.

17 Q. And I think that's all on that. You can have a
18 seat again. I have got one more area I want to cover with
19 you.

20 (Witness resumes witness stand, and Mr. Evans
21 shows a map to Defense Counsel.)

22 Q. Chief, I want to show you Exhibit 117 and ask if
23 you can examine that?

24 A. Yes, sir.

25 Q. What is Exhibit S-117?

26 A. It's going to be a map of the city, city map.

27 Q. And is that a true and accurate map of the roads
28 of Winona in 1996?

29 A. Yes, sir.

Johnny Hargrove - DIRECT

1 BY MR. EVANS: Your Honor, I offer this into
2 evidence.

3 BY MR. CARTER: No objection.

4 BY THE COURT: Let it be admitted.

5 (MAP PREVIOUSLY MARKED AS STATE'S EXHIBIT S-117
6 FOR IDENTIFICATION, WAS NOW RECEIVED IN EVIDENCE.)

7 BY MR. EVANS: May I have the witness step down
8 again, Your Honor?

9 BY THE COURT: Uh-hum.

10 BY MR. EVANS:

11 Q. Chief, if you would, take Exhibit 117 and hold it
12 to where the jury can see and point out what it actually
13 shows, where Tardy Furniture was located, where Highway 51
14 is located, and just explain that map to them.

15 A. This right here is going to show--

16 Q. -- Some of them probably can't see it like that.

17 A. This down here is going to show the Greenlee where
18 I came off, and I got on to Church and went down to the
19 downtown area, which this is a complete, you know, map of
20 the city.

21 Q. And can you see the street that runs in front of
22 Tardy Furniture?

23 A. I don't have my glasses on.

24 Q. All right. Well, what is the name of the street
25 that runs in front of Tardy Furniture?

26 A. The one running right in front of Tardy, that is
27 going to be--

28 BY THE BAILIFF: -- The jury can't hear him.

29 BY MR. EVANS:

Johnny Hargrove - DIRECT

1 Q. You need to speak where everybody can hear you.
2 Going to be Front Street?

3 A. That's right.

4 Q. And what street did you say runs right beside?

5 A. Going to be Carrollton Street.

6 Q. Carrollton. All right. Thanks, Chief.

7 A. It has got (inaudible.)

8 Q. All right. Chief, approximately how long did it
9 take for the crime scene unit to arrive?

10 A. It took them a pretty good while to get there.
11 They had to drive from Jackson.

12 Q. A couple of hours or so?

13 A. Yes, sir.

14 Q. And I'm not trying to pin you down even close, but
15 approximately how long was it that the crime scene unit was
16 there working with the store and the bodies?

17 A. It was a long time.

18 Q. Most of the day?

19 A. Yes, sir. Yeah, sure was.

20 BY MR. EVANS: Your Honor, I will tender the
21 witness.

22 BY THE COURT: Okay. It's 10 after 12:00. We are
23 going to wait to do cross-examination until after
24 lunch. Is the stuff here?

25 BY THE BAILIFF: Yes, sir.

26 BY THE COURT: Okay, ladies and gentlemen, we
27 have, we have got some food for you. It apparently is
28 here, and they are going to deliver it to you in the
29 jury room, and we will continue back. In about an hour

Johnny Hargrove - CROSS

We will start back again.

You can step down.

(FOLLOWING THE NOON RECESS ON NOVEMBER 29, 2007,
PROCEEDINGS CONTINUED IN OPEN COURT WITH ALL COUNSEL, THE
DEFENDANT AND THE JURY ALL PRESENT:)

BY THE COURT: And I need the Chief too.

(Johnny Hargrove resumes the witness stand.)

BY THE COURT: All right, Mr. Carter.

CROSS-EXAMINATION BY MR. CARTER:

Q. Chief Hargrove, I shouldn't be too long. I don't really have a problem with anything you did. But I thank you for clearing up what stores were open and what stores were not. I have been on this case eight years later, but I believe you said that Tardy's was in business at the time, Liberty Cash, and there was another store there between Tardy's and Coast to Coast that were not doing business at the time, were not open?

A. They wasn't.

Q. Okay. And hadn't been open for a while?

A. Yes, sir.

Q. Okay. Now before the crime, did you call the crime lab from Jackson, or did somebody else do it?

A. I, when I called the dispatch for back up and all that, I asked them to call the DA's office investigators and the crime lab.

Q. Okay. Now I believe Chief Thornburg, Sheriff Thornburg came later; is that correct?

A. He drove up by the time MedStat and all them drove up.

Johnny Hargrove - CROSS

1 Q. Do you recall what -- how many officers did you
2 have there? How many people working for you that was there
3 that you recall?

4 A. It was just two of us.

5 Q. Just two of you. And how many from the Sheriff's
6 Department that you recall?

7 A. I just remember Sheriff Thornburg. Then later on
8 lots of different folks started coming up.

9 Q. Okay.

10 A. But I don't know how many from the sheriff's
11 department.

12 Q. Now I take it that -- well, I assume since it was
13 in the city, that you, I guess, were kind of handling the
14 situation until the crime lab got there? Or was Sheriff
15 Thornburg, or were y'all doing it jointly?

16 A. What we did, we roped off the crime scene and
17 waited until the investigators and all them got there.

18 Q. Okay, and you say investigator; you are talking
19 about investigators from Jackson or?

20 A. No, from the highway patrol and from the DA's
21 office.

22 Q. Okay. And from the DA's office, we have Mr. Evans
23 and Mr. Johnson, I believe; is that correct?

24 A. Yes, sir.

25 Q. Now at some point do you recall whether there was
26 a monetary reward being offered for information about the
27 crime or anybody that might have been involved?

28 A. Yes, sir. It was posted down at the station.

29 Q. Okay. Now those two buildings that were between

Johnny Hargrove - CROSS

1 Coast to Coast and Tardy's, do you know if anybody looked in
2 those buildings to see if there was any kind of trace
3 evidence or anybody hiding in there or anything?

4 A. They wasn't open. They were locked.

5 Q. They were locked?

6 A. Yes, sir.

7 Q. And to your knowledge, nobody, not that you could
8 see, nobody opened the door and actually went in and did
9 anything in either place that you know of, did they?

10 A. No, sir.

11 Q. Okay. How long did you stay at the scene that
12 day? Were you there pretty much all day?

13 A. Yes, sir.

14 Q. Now did you make any personal notes yourself or
15 about, I guess what you found the scene to be, or did you
16 leave that to the investigators?

17 A. Left it to the investigators.

18 Q. And is it fair to say that once the crime lab got
19 there, you just basically watched, or did you participate in
20 the investigation?

21 A. Watched.

22 Q. Just watched?

23 A. Yes, sir.

24 Q. Okay. Was there anyone in particular that you
25 release the crime scene to? Do you know who you released it
26 to or if there was somebody in particular?

27 A. After the investigators and all come over there,
28 they took over the scene.

29 Q. And was that Jack Matthews and Wayne Miller?

Johnny Hargrove - CROSS

1 A. Wayne Miller, yeah.

2 Q. About what time did they get there? How much
3 later after you and Sheriff Thornburg?

4 A. It was, it was a pretty good while in there. I
5 think they had to drive from Greenwood.

6 Q. Now how long had you been chief at that time?

7 A. Chief at that time? I just had became chief.

8 Q. Okay. A month or so?

9 A. It was a couple of months in there. It wasn't
10 long.

11 Q. Was this the worst crime you had seen in Winona?

12 A. Oh, yeah.

13 Q. To date, I imagine, isn't it?

14 A. Yes, sir.

15 Q. Now before you got the call about something having
16 happened at Tardy's, were you on the east side of town --
17 I'm sorry, the west side of town?

18 A. I was down about 407. Close to 407.

19 Q. And were you anywhere -- were you on Powell or
20 anywhere close to McNutt or Knox School, back over that way
21 earlier that morning?

22 A. Earlier that morning, I had patrolled over.

23 Q. And during that patrol, did you see Curtis Flowers
24 walking up the steps there where the old Knox School is
25 located?

26 A. No, sir.

27 Q. Now when you came into Tardy's, I am struck about
28 how you were able to see Ms. Tardy first. Did you come in
29 from a side door or back door or somewhere?

Johnny Hargrove - CROSS

1 A. Came in the front door.

2 Q. And as I understand it, I thought Ms. Tardy was
3 located closer to the back.

4 A. Her, when you come through the front door, it's an
5 aisle way down through there, and you can -- she was laying
6 in that aisle way.

7 Q. So when you go in the front door -- I have never
8 been in the store. When you go in the front door, do you
9 have to make a left to walk down that aisle way that you are
10 talking about or a right?

11 A. See, when you come through the front door, it is
12 just like you are walking straight. They have got furniture
13 on both sides, and you are walking down the aisle way like.
14 And when you get close to the counter, there is another
15 aisle way down through there where she was laying.

16 Q. Okay, did you have to make a left or a right to
17 get to that, the other aisle way?

18 A. No. You don't have to make a left or right.

19 Q. Okay. Did you -- how many doors to that building?
20 Did you check?

21 A. I haven't counted the doors to it.

22 Q. And when you all roped it off, did you rope off
23 the entire building, or did you pretty much rope off the
24 front?

25 A. Roped off most of the front.

26 Q. Okay. Now behind that building there, there was a
27 Weed Brothers, I think, that was open?

28 A. Yes, sir, a body shop.

29 Q. And wasn't there another building that was close

Johnny Hargrove - CROSS

1 there that was also open? What other businesses behind
2 there that were in business at the time, if you recall?

3 A. I believe it was just Weeds right in there.

4 Q. Just Weeds?

5 A. Yes, sir.

6 Q. Now on your ride through getting to Tardy's, you
7 didn't see anybody running away from Tardy's, did you?

8 A. No, sir.

9 Q. And you didn't see Mr. Flowers anywhere over there
10 that morning, did you?

11 A. No, I did not.

12 Q. I hope I haven't asked you this before, but did
13 you ever put, did you ever make any writings of what you
14 found or saw that morning?

15 A. No, sir.

16 Q. Now I believe John Johnson did talk to you
17 probably 6 or 7 months later regarding -- or did he?

18 A. Yes.

19 Q. Do you recall whether-- he did?

20 A. We all talked on different stuff.

21 Q. Okay. When you say we all talked, I assume there
22 was like an ongoing investigation for several months?

23 A. Investigating.

24 Q. And as a result, y'all talked and discussed and
25 whether you had any leads or any information that you could
26 share to help with the case? Is that pretty much what you
27 are saying?

28 A. Yes, sir.

29 **BY MR. CARTER:** One moment, Your Honor.

Johnny Hargrove - CROSS - REDIRECT
(Defense Counsel confer.)

BY MR. CARTER:

Q. Mr. Hargrove, do you remember if there was, other than Weed Brothers, do you recall whether Coast to Coast had some other little building back there that they might have been open and did some kind of business?

A. They had a tire place back there, I believe, that you know, they do tires and stuff like that.

BY MR. CARTER: Okay. No further questions.

REDIRECT EXAMINATION BY MR. EVANS:

Q. Chief, after you received the call about 10:20, 10:21, whatever it was in that area, you say it took you how long to get there?

A. A little less than a minute.

Q. I'm sorry; I couldn't hear you.

A. It was less than a minute.

Q. Okay, so you were there by around 10:21 or 10:22?

A. Yes, sir, somewhere.

Q. And you stayed there basically all day?

A. Yes, sir.

BY MR. EVANS: Nothing further, Your Honor.

BY THE COURT: You may step down. Who will you have next?

(Witness leaves the courtroom.)

BY MR. EVANS: Dr. Hayne.

DR. STEVEN TIMOTHY HAYNE,
upon being called to testify as a witness by the State of Mississippi, having first been duly sworn, testified as follows, to-wit:

Steven Timothy Hayne - DIRECT

1 BY THE COURT: State your name, please, sir.

2 BY THE WITNESS: Steven Timothy Hayne, Your Honor.

3 BY MR. EVANS: May I proceed, Your Honor?

4 BY THE COURT: Yes.

5 DIRECT EXAMINATION BY MR. EVANS:

6 Q. Dr. Hayne, what is your profession?

7 A. I'm a physician working in the fields of anatomic,
8 clinical and forensic pathology.

9 Q. What is forensic pathology?

10 A. Forensic pathology is a division of anatomic and
11 clinical pathology. It essentially addresses as most
12 important issues, the determination of cause of death,
13 manner of death involving the death of human beings. And
14 specifically, the cause of death is the medical reason that
15 person died, whether it be from a heart attack or a stab
16 wound or pneumonia or literally thousands of possibilities;
17 while the manner of death is the classification of the
18 death, whether it be suicide, accident, homicide, natural,
19 in some cases pending until additional information is
20 gathered, and in some cases undetermined when one cannot
21 come to a final conclusion. There are so many other tasks
22 within the fields of anatomic, clinical and forensic
23 pathology, but for forensic pathology, those are the two
24 most important tasks.

25 Q. Dr. Hayne, what, would you describe a little bit
26 to the ladies and gentlemen of the jury what your
27 educational and experience background is that allows you to
28 be a forensic pathologist.

29 A. I graduated from medical school at Brown

Steven Timothy Hayne - DIRECT

1 University in Providence, Rhode Island. I did my pathology
2 training at Letterman Army Medical Center at the Presidio in
3 San Francisco. I rotated at different institutions in the
4 San Francisco Bay area, including the Medical Examiner's
5 Office for the City and County of San Francisco. I have
6 worked in the field for some 30 years now in anatomic,
7 clinical and for the most part, in forensic pathology.

8 Q. And Dr. Hayne, how many courts have you been
9 accepted as an expert in approximately?

10 A. The total number of times or individual courts?

11 Q. Just individual courts.

12 A. Every Circuit Court in Mississippi, Federal Courts
13 in Mississippi and out of Mississippi, other state courts
14 outside of Mississippi, and Military Courts under the
15 Uniform Court of Military Justice.

16 Q. All right. And you have been accepted as an
17 expert in this particular district on many occasions; is
18 that correct?

19 A. On several occasions; yes, sir.

20 BY MR. EVANS: Your Honor, before we go further, I
21 would offer Dr. Hayne as an expert in forensic
22 pathology.

23 BY THE COURT: Any objection to that?

24 BY MR. CARTER: No, sir.

25 BY THE COURT: Okay, the Court accepts him as an
26 expert in that field.

27 BY MR. EVANS:

28 Q. Dr. Hayne, in relationship to the case that we are
29 here on today, did you have an occasion to perform autopsies

Steven Timothy Hayne - DIRECT

1 on the bodies of Bertha Tardy, Carmen Rigby, Robert Golden,
2 and Derrick or BoBo Stewart?

3 A. I did, Counselor. The last individual was
4 identified to me as Derrick Stewart by the county coroner
5 medical exam investigator, Carl Oliver, of Montgomery
6 County.

7 Q. All right, and I believe the first three that I
8 named were done at one time, and Derrick Stewart was done at
9 a later time; is that correct?

10 A. Ms. Tardy, Ms. Rigby and Mr. Golden, those post
11 mortem examinations were conducted on the 16th of July of
12 the year 1996. The post mortem autopsy on Mr. Stewart was
13 conducted on the 23rd of July of the year 1996.

14 Q. Are you aware of why his was done that many days
15 later?

16 A. Mr. Stewart was hospitalized for a period of time
17 subsequently suffering irreversible brain injury and death.
18 And there was a delay due to medical intervention in his
19 particular case.

20 Q. All right, thank you, Dr. Hayne. Dr. Hayne,
21 before we actually get into these, would you just kind of
22 generally explain to the ladies and gentlemen of the jury
23 what actual steps you take, the preliminary steps you take
24 in performing an autopsy.

25 A. There are several steps, Counselor. The first
26 step is not actually looking or working on the body, but
27 it's to familiarize yourself with the case with the
28 submitting officer. In this case Skeeter Robinson was
29 acting on behalf of the coroner's office in Montgomery

Steven Timothy Hayne - DIRECT

1 County on the first three autopsies, those conducted on the
2 16th of July. And then later on the 23rd of July, with Carl
3 Oliver, the county coroner medical examiner investigator of
4 Montgomery County.

5 That is followed by an external examination
6 looking at the external surfaces of the body to see if there
7 is any evidence of disease or injury. I was focusing on
8 that, the injury or disease that may participate in the
9 death of an individual, with collection of evidence and
10 documentation of the findings appropriate to that step of
11 the examination.

12 That's followed by an internal examination,
13 opening the body cavities and again, to see if there is
14 evidence of disease or injury that could produce the death
15 of this individual. There is collection of evidence
16 appropriate to that step of the investigation. Again, one
17 would contact the authorizing officer requesting the
18 autopsy, and in some cases law enforcement officers to see
19 if there are any differences between the scene investigation
20 and the preliminary autopsy findings.

21 There is a series of additional steps that are
22 taken. One must record each step of the investigation on
23 the death during the course of the autopsy, and ultimately
24 in compliance with the Attorney General's ruling of this
25 state, come to a conclusion as to the cause of death, the
26 medical reason the person died, and the manner of death, the
27 classification of the death.

28 Q. All right.

29 BY MR. EVANS: Your Honor, before I go further, I

Steven Timothy Hayne - DIRECT
1 have a group of exhibits that I would like to have
2 marked.

3 (Documents shown to Defense Counsel.)

4 BY MR. EVANS: Your Honor, for the record, I have
5 a group of photographs. Then I have four exhibits,
6 Exhibit 72, 73, 74 and 75, which are diagrams. And
7 then I have Exhibits 87 and 86 that I would like to
8 offer all into evidence at this time.

9 BY THE COURT: Any objection to that?

10 BY MR. CARTER: No, sir.

11 BY THE COURT: Okay, let them be admitted then.

12 BY MR. EVANS: Well, I guess, would you like for
13 me to read these numbers too just for the record?

14 BY THE COURT: Yeah, let's make a record.

15 BY MR. EVANS: Exhibit 71, 70, 69, 68, 67, 66, 65,
16 64, 63, 62, 61, 53, 54, 55, 56, 57, 58 and 59.

17 (AUTOPSY PHOTOGRAPHS PREVIOUSLY MARKED AS STATE'S
18 EXHIBITS S-53 THROUGH S-59 FOR IDENTIFICATION WERE RECEIVED
19 IN EVIDENCE. AUTOPSY PHOTOGRAPHS PREVIOUSLY MARKED AS
20 STATE'S EXHIBITS S-61 THROUGH S-71 AND DIAGRAMS MARKED S-72
21 THROUGH S-75 WERE RECEIVED IN EVIDENCE. BULLET FRAGMENT
22 FROM CARMEN RIGBY AND BULLET FRAGMENT FROM ROBERT GOLDEN
23 PREVIOUSLY FOR IDENTIFICATION AS STATE'S EXHIBITS S-86 AND
24 S-87 RESPECTIVELY WERE ALSO MARKED IN EVIDENCE.)

25 BY MR. EVANS:

26 Q. All right, Dr. Hayne, I would like to start if you
27 would, with Ms. Bertha Tardy. Can you tell the ladies and
28 gentlemen of the jury what you observed when you first
29 observed Ms. Tardy.

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1 A. As to the specific injuries, Counselor, there was
2 one injury consisting of a gunshot wound entering the right
3 side of the head exiting the left eye. The entrance gunshot
4 wound was found slightly above the right ear. It entered at
5 a point approximately three inches below the top of the head
6 approximately an inch and a half behind or in front of the
7 back of the head. The bullet was noted to travel across the
8 head. It was traveling downward at approximately 5 to
9 10 degrees going right to left and going from front to back
10 at approximately 40 to 50 degrees. If I may point to
11 myself, Counselor?

12 Q. Yes, sir.

13 A. The entrance gunshot wound was located
14 approximately here. The exit gunshot wound was located
15 approximately there. The bullet was traveling slightly
16 down, markedly from back to front, and from right to left.
17 It went through the cranial vault, the skull of the
18 decedent. It produced a wound track measuring approximately
19 one inch in diameter going through the right and left
20 cerebral hemispheres, which are the large structures of the
21 brain located on the top part of the brain itself. And
22 giving the types of injuries producing by a bullet, the
23 swelling of the brain, the laceration of the wound track,
24 death would be essentially inevitable from that type of an
25 injury. She died from a gunshot wound to the right side of
26 the head, sir.

27 Q. All right, Dr. Hayne, how are you able to tell
28 which one of the, I assume that she had a hole in the back
29 and a hole in the front from the gunshot. How are you able

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1 to make a determination of which was the entry wound and
2 which was the exit?

3 A. It is really quite simple, Counselor. The
4 entrance wound is internally beveled. Just like when a rock
5 hits a windshield, there is a smaller hole on the outside of
6 the windshield, a larger hole on the inside. The same
7 physical property holds true for any speeding object
8 striking a dense structure. Whether it be bone or glass, it
9 is going to produce that type of an injury. It will be
10 internally beveled.

11 The entrance wound also was characteristic of an
12 entrance wound. The exit gunshot wound was also
13 characteristic of an exit gunshot wound.

14 Q. All right, Dr. Hayne, so basically the bullet
15 entered the back of her head and exited the front?

16 A. It entered on the right back of the head slightly
17 above and slightly behind the mid part of the right ear and
18 exited in the left eye socket.

19 Q. And the bullet passed through her brain?

20 A. It was through and through gunshot wound going
21 through her brain producing a defect through the right and
22 left cerebral hemispheres actually measuring 2.6 centimeters
23 in diameter which is slightly greater than 1 inch in
24 diameter.

25 Q. All right, and Dr. Hayne, I know sometimes when we
26 are asking the questions, we refer to different gunshot
27 wounds as being lethal or non-lethal. And you are saying
28 that this particular gunshot wound was a lethal gunshot
29 wound?

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1 A. It was a lethal gunshot wound, and it produced
2 death in this individual.

3 Q. Dr. Hayne, approximately can you give us any
4 estimate of how long it would have been before she would
5 have been completely incapacitated?

6 A. I would expect incapacitation to be essentially
7 immediate, Counselor. Death, depending upon how you define
8 death, could occur at a slightly variable time. If you are
9 using a cardiovascular criteria for death, that is, the
10 beating of the heart, she could live for a short period of
11 time. Respiratory death, if you define death as the
12 stopping of breathing, I think that that could have
13 persisted for a while longer. Brain death would come first.
14 The other deaths would come second, so it depends upon how
15 you define that. But incapacitation, I would expect to be
16 rendered immediately.

17 Q. All right. Dr. Hayne, during the performance of
18 your autopsy, is part of your procedure to make diagrams?

19 A. It is, Counselor.

20 Q. And is another part also to make photographs so
21 that you can preserve what you see?

22 A. It is, sir.

23 Q. Did you do that in this case?

24 A. I did, Counselor.

25 Q. Dr. Hayne, I want to show you Exhibits 73, 57, 58
26 and 59.

27 A. Yes, Counselor.

28 Q. What are those exhibits?

29 A. State's 58 shows the entrance gunshot wound to the

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1 right side of the head of Ms. Tardy, and the hair has been
2 shaved to demonstrate the entrance wound. State's 58 shows
3 the entrance wound is a slightly greater distance in focus
4 than the previously identified exhibit. It's the entrance
5 gunshot wound on the right back of the head.

6 State's 55--57 shows the exit gunshot wound on the
7 left orbit of the decedent. There is a large bruise around
8 the eye as a product of that gunshot wound.

9 State's 73 has two items. One is the ME-17 form
10 request for post mortem examination signed by Skeeter
11 Robinson indicating that the request was on the remains of
12 Bertha Tardy. And there are an additional 5 pages showing
13 the entrance and exit gunshot wound sites illustrated by the
14 diagram sheets. It also shows the wound track coursing
15 through the cerebral hemispheres. It also shows the base of
16 the skull indicating where the fractures were including the
17 entrance and exit wounds and also fractures over the bony
18 structures that hold the right and left ears, and also a
19 fracture over the right orbital plate as well as the gaping
20 exit wound over the left orbital plate which are the thin
21 bone roofs of the eye sockets.

22 The fifth diagram shows a fracture of the eye
23 socket at the exit gunshot wound. It also shows the
24 entrance gunshot wound on the skull on the right side, sir.

25 Q. All right. And do all of these truly and
26 accurately depict what you actually saw?

27 A. They do, sir.

28 Q. Dr. Hayne, based upon your examination of
29 Ms. Tardy, what was the cause and manner of death of her?

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1 A. Ms. Tardy died from a gunshot wound to the right
2 side of the head. I ruled the manner of death as homicide.

3 Q. And this was a through and through wound?

4 A. It was through and through. It entered and exited
5 the body.

6 Q. So there was no projectile recovered on Ms. Tardy?

7 A. No projectiles recovered. I recovered no bullet
8 fragments from examination of the contents of the cranial
9 vault.

10 Q. Were you able to make any determination as to
11 distances that a weapon would have been fired from?

12 A. I saw no tattooing, smudging or flame injury, and
13 I would conclude that it was a distant gunshot wound. It
14 would indicate that the gunshot was fired; that is, the end
15 of the muzzle to the entrance gunshot wound at a distance of
16 a foot and a half to two and a half feet or greater. I
17 think it would not be closer than that.

18 Q. All right, and you can't determine really how far
19 away, just that it would have had to have been at least that
20 far away?

21 A. At least a foot and a half. Of course, it could
22 go up to a much greater distance than that as long as there
23 is still enough kinetic energy in the bullet to produce the
24 injuries that were observed in the head of Ms. Tardy.

25 Q. But basically what you can say from this gunshot
26 wound is it was not a contact wound?

27 A. It was not a contact gunshot wound.

28 Q. Were you able to make any determination as to the
29 approximate caliber of the weapon that caused this?

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1 A. I could not, Counselor. I thought it was a larger
2 caliber. I did not have the projectile, and obviously from
3 the wounds, I would exclude a .22 or a .25 caliber, but
4 certainly it could be one of the larger caliber weapons
5 producing that injury.

6 Q. All right, sir. All right, Dr. Hayne, next I
7 would like to go--

8 A. May I also add to that comment? It was not a
9 shotgun, and the injuries were such that I would reasonably
10 exclude a long barreled weapon such as a rifle.

11 Q. Okay. So large caliber pistol or revolver,
12 automatic?

13 A. Either a revolver or an automatic of a larger
14 caliber would be my impression, sir.

15 Q. All right. Next let's go to the autopsy of
16 Ms. Carmen Rigby.

17 A. Yes, sir.

18 Q. Would you tell us what you observed first?

19 A. In Ms. Rigby there were actually two types of
20 injuries observed. There was some nonlethal injuries
21 consisting of superficial abrasions or scrapes of the skin
22 located on the left side of the face, the forehead and left
23 cheek, a very small size measuring approximately an eighth
24 to a sixteenth of an inch. There were also injuries to the
25 right shoulder on the front surface, the right arm and the
26 right forearm. There was a large bruise located over the
27 upper part of the extremity that measured approximately four
28 inches, and there was an abrasion or a scrape or scratch
29 located in the center of that bruise that measured

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1 approximately an inch and a half. There was also a small
2 bruise located on the upper inner front surface of the right
3 arm that measured approximately an inch. And then there was
4 also a bruise located over the upper front surface of the
5 right forearm that measured slightly greater than one inch.

6 In addition to that, there was a gunshot wound to
7 the decedent. The gunshot wound struck the decedent in the
8 back of the head, and it was located, the entrance gunshot
9 wound at a point approximately 3 inches below the top of the
10 head, approximately 1 inch to the right of the mid back of
11 the head. And that bullet was noted to travel markedly from
12 back to front at approximately 60 degrees. It was going
13 left to right, and it was also going slightly down at
14 approximately ten degrees.

15 The bullet traveled across the back of the skull
16 and exited behind the right ear at a point three and one
17 half inches below the top of the head, approximately one
18 inch forward from the back of the head. And it produced
19 lacerations or tears of the right cerebral hemisphere. That
20 is the large structure of the brain. And on the right
21 cerebral hemisphere, those injuries were located to the back
22 area of the cerebral hemisphere.

23 There were also, of course, fractures from the
24 entrance gunshot wound, exit gunshot wound, and there were
25 small fragments of copper and lead core, jacket and lead
26 core fragments located in the brain tissue.

27 Q. All right, did you have an occasion to also take
28 photographs and do diagrams of Ms. Rigby?

29 A. I did, Counselor.

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1 Q. Dr. Hayne, I will hand you Exhibit 74 and ask you
2 if you can identify what that is?

3 A. I can, sir. State's 74 consists of four body
4 illustration diagram sheets including a representation of
5 the entrance gunshot wound, one of the exit gunshot wound,
6 one of the injuries to the brain, and one also showing the
7 fractures of the skull.

8 Q. And now I would like to show you Exhibit 61, 62,
9 63 and 64. If you would, examine those, please.

10 A. State's 61 shows both the entrance and the exit
11 gunshot wound on the descendant -- the entrance gunshot
12 wound on the back of the head, the exit gunshot wound on the
13 right back of the head.

14 State's 62 shows the bruise located over the right
15 forearm.

16 State's 62 shows the entrance gunshot wound to the
17 back of the head, and there is an ABFO calibrated ruler to
18 document the size of it.

19 State's 63 shows an elliptical exit gunshot wound,
20 semicircular on the right back of the head. The hair has
21 been partially shaved, and there is an ABFO calibrated ruler
22 again to document the size of that injury.

23 Q. Do these photographs and diagrams that were
24 prepared by you truly and accurately depict what you
25 observed of Ms. Rigby at the time?

26 A. They do, Counselor.

27 Q. Would you point out on your head where the
28 entrance gunshot wound was.

29 A. The entrance gunshot wound was located slightly to

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1 the right of the back of the head.

2 Q. And the exit gunshot wound?

3 A. The exit gunshot wound was located behind the
4 right ear located approximately where my finger is pointing.

5 Q. And the path of the bullet between those two
6 wounds?

7 A. The bullet traveled from back to front traveling
8 basically across the back of the head at an angle of
9 approximately 60 degrees, and it was going slightly down at
10 approximately 10 degrees. There was also traveling markedly
11 from left to right.

12 Q. And you did recover some fragments from
13 Ms. Rigby's skull; is that correct?

14 A. I did, Counselor. Fragments, copper jacket and
15 lead core from the projectile.

16 Q. Dr. Hayne, I will hand you Exhibit 86 and ask if
17 you can identify this. The writing has faded. You may have
18 to open it up to--

19 A. It is difficult to read the writing on the bag,
20 but in the container, plastic container it says, "Carmen
21 Rigby." It gives the case number. It says, "Bullet
22 fragments from gunshot wound, 16 July '96," and it has my
23 initial on it.

24 Q. All right, so Dr. Hayne, what is Exhibit 86?

25 A. State's--

26 Q. -- Is that the fragments that you actually removed
27 from the head of Ms. Rigby?

28 A. State's 86 contains the fragmented projectile from
29 the decedent's head corresponding to the gunshot wound.

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1 Q. What did you do with that after you recovered it?

2 A. The fragments were washed; they were dried; they
3 were wrapped in paper, placed in the plastic container, and
4 that was labeled and sealed. Then it was placed in a
5 plastic evidence bag. That was labeled and sealed. They
6 were transferred under chain of custody to the Mississippi
7 Crime Lab to the Firearms Division in Jackson.

8 Q. All right. And Dr. Hayne, did you make a
9 determination as an expert in the field of forensic
10 pathology as to the manner and cause of death of Ms. Rigby?

11 A. I did, sir.

12 Q. What was that?

13 A. Ms. Rigby died from a gunshot wound to the back of
14 the head. I ruled the manner of death as homicide.

15 Q. And next Dr. Hayne, if you would, let's go to
16 Mr. Robert Golden. Well, first, let me ask you one other
17 question about Ms. Rigby, at least for now. Were you able
18 to make any determination as far as Ms. Carmen Rigby as to
19 how long from the time she received that wound it would have
20 been before she would have been completely incapacitated?

21 A. I couldn't make that determination, Counselor. I
22 would expect incapacitation to occur in a relatively short
23 period of time, but the injuries sustained by Ms. Tardy-- I
24 mean by Ms. Rigby were far less severe than those suffered
25 by Ms. Tardy.

26 Q. Were you able to make any determination about the
27 other bruises to the body as far as the time frame when they
28 could have necessarily been made?

29 A. They occurred in my opinion, Counselor, at or

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1 about the time of the infliction of the gunshot wound.

2 Q. And most of those bruises that you have described
3 to the arm are shown in Exhibit 62; is that correct?

4 A. Well, actually, Counselor, the only injury in this
5 particular image is the bruise to the right forearm. The
6 bruises to the right arm and shoulder are not in view in
7 this particular photograph.

8 Q. All right, sir. Dr. Hayne, if you would, now
9 refer to your notes on Mr. Robert Golden.

10 A. Yes, sir.

11 Q. What were your initial findings as far as
12 Mr. Golden?

13 A. As to injuries, Counselor, there were two specific
14 injuries. There was a gunshot wound to the left ear. That
15 gunshot wound struck the upper part of the left ear on the
16 more forward aspect of the ear called the helix, and that
17 bullet was noted to have traveled across the head exiting
18 immediately behind the right ear. The bullet was noted to
19 travel slightly upward and also go slightly to the back at
20 approximately 10 to 20 degrees. The bullet was noted to
21 course through the brain producing a gaping gunshot wound
22 through the brain measuring slightly less than one inch in
23 diameter.

24 In addition to that gunshot wound, there was
25 another gunshot wound located over the top of the head of
26 the decedent, and it was found at a point two and one half
27 inches forward from the back of the head. That bullet
28 traveled downward, and it was traveling forward at
29 approximately 30 to 40 degrees, and it was traveling

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1 slightly to the right at approximately 10 to 15 degrees.

2 And that bullet also produced extensive injuries to the
3 cerebral hemispheres, both the left and the right cerebral
4 hemispheres. And from that wound track, multiple small
5 copper jacket fragments and lead core fragments were
6 recovered.

7 So Mr. Golden had two lethal injuries. One
8 gunshot wound struck the left ear, went across the head
9 exiting behind the right ear. One gunshot wound struck the
10 top of the head of Mr. Golden, going through the brain and
11 actually striking in part the thin bony covering over the
12 right eye. And from that wound track, bullet fragments were
13 recovered.

14 Q. So he was actually shot twice?

15 A. He received two gunshot wounds, both of which
16 would be lethal.

17 Q. And you were able to recover bullet fragments from
18 your autopsy of him?

19 A. Yes, sir.

20 Q. Dr. Hayne, I want to first show you Exhibit 75 and
21 ask if you can identify that?

22 A. Yes, sir.

23 Q. What is Exhibit 75?

24 A. State's 75 shows the injuries documented involving
25 the gunshot wound to the left ear exiting the right side of
26 the head. There was a, one illustration body diagram shows
27 both the entrance and exit wounds. One shows the wound
28 track on a front/back view. One shows the injuries to the
29 brain, and one shows the fractures to the skull and cranial

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vault as a product of that gunshot wound.

Q. And are those diagrams the diagrams that you prepared from your autopsy of Mr. Robert Golden?

A. They are, Counselor.

Q. I next would like to show you Exhibits 65, 66, 67, 68, 69, 70 and 71 and ask that you examine them, please.

A. State's 67 is a facial view of the decedent for identification purposes.

State's 66 shows the entrance gunshot wound, and there is tattooing, unburnt fragments of powder around the entrance gunshot wound indicating that the weapon was in very close proximity to the decedent when the gunshot wound to the right ear was inflicted-- the left ear--

Q. Let me stop you right there, Dr. Hayne, for just a minute. As far as the tattooing, what causes the tattooing effect that you have described?

A. Tattooing is unburnt powder leaving the barrel of a weapon that will travel to a distance variably from approximately a foot and a half up to three feet for some long barreled weapons. And it will form a cone as it comes out of the barrel of a weapon; that is, it will start to spread as it leaves the weapon. And one can approximate a distance from the entrance gunshot wound to the muzzle of the weapon based upon that. The final determination would have to be based upon firing the same weapon using the same ammunition against known distances to document the actual spread of that tattooing. However, this would indicate that the weapon was close to the decedent's head when the weapon was fired.

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1 Q. All right, go ahead with the others.

2 A. State's 67 shows the exit gunshot wound behind the
3 right ear of Mr. Golden.

4 State's 68 shows the entrance gunshot wound to the
5 top of the head located slightly to the left of the midline
6 of the top of the head.

7 State's 69 is a closer view of the entrance
8 gunshot wound to the top of the head, and the area has been
9 shaved in part to demonstrate the injury.

10 State's 70 shows the entrance gunshot wound with
11 an ABFO calibrated ruler to document the size of the
12 entrance gunshot wound to the top of the head.

13 State's 71 shows the entrance gunshot wound to the
14 left ear again with an ABFO calibrated ruler to document the
15 size of the entrance gunshot wound.

16 Q. And Dr. Hayne, I will hand you Exhibit 87 and ask
17 you if this is the bullet fragments that you recovered from
18 Mr. Golden?

19 A. Yes, Counselor. It so indicates on the plastic
20 container inside the bag, though the marking on the outside
21 of the bag is very difficult to read. And it indicates that
22 they are the bullet fragments recovered from gunshot wound
23 number two corresponding to the gunshot wound to the top of
24 the head, and it contains fragments of a bullet in the
25 plastic test tube.

26 Q. All right, Dr. Hayne, what procedure did you take
27 as far as exhibit, that you have just described?

28 A. The gunshot wound fragments, Counselor, were
29 washed, dried, wrapped in paper, placed in the plastic test

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1 tube. It was labeled, sealed, placed in the evidence bag.
2 That was labeled and sealed and then under chain of custody,
3 was submitted to the Firearms Division, to the Mississippi
4 Crime Lab in Jackson for identification and any other
5 studies that the Firearms Division could do on that
6 particular bullet fragment and fragments.

7 Q. All right. Dr. Hayne, as far as the two gunshots
8 to Mr. Robert Golden's head, would you describe each of them
9 as far as being lethal or nonlethal.

10 A. Each would produce death, Counselor. Both
11 produced significant what medically is called cranial
12 cerebral trauma; that is, injuries to the brain as well as
13 to the skull.

14 Q. Dr. Hayne, did you make a determination as to the
15 manner and cause of death of Mr. Robert Golden?

16 A. I did, Counselor.

17 Q. What was that?

18 A. Mr. Golden died of two gunshot wounds - one
19 gunshot wound to the left ear, one gunshot wound to the top
20 of the head.

21 Q. Next, I direct your attention to Derrick Stewart.
22 What were your initial observations of Derrick Stewart?

23 A. The initial finding indicated to me that
24 Mr. Stewart, as opposed to the other three individuals, had
25 received medical intervention. That was confirmed by
26 correspondence with the county coroner medical exam
27 investigator and also the delay in receiving Mr. Stewart's
28 remains for post mortem examination. The entrance and exit
29 gunshot wounds had both been sutured. Sutures had been

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1 placed by medical personnel. There was also evidence that
2 he had received intravenous support; that is, there were
3 small defects at different sites in the body for delivery of
4 fluids to the decedent.

5 The significant traumatic injury consisted of an
6 entrance gunshot wound located over the left back of the
7 head. It was found at a point three inches below the top of
8 the head and at a point one inch to the left of the mid back
9 of the head. That bullet on internal examination was noted
10 to travel from back to front, markedly from back to front,
11 slightly deviating to the right and going slightly downward,
12 each at approximately 5 to 10 degrees.

13 There was an exit gunshot wound in the area of the
14 right eyebrow. And that was found at a point approximately
15 five inches below the top of the head and slightly greater
16 than one inch to the right of the mid part of the face.
17 Significant injuries were identified to involve the brain.
18 There was a gaping gunshot wound going through both the left
19 and right cerebral hemispheres measuring approximately an
20 inch in diameter. There was also evidence of edema and what
21 is called epoxy encephalopathy. That is brain death had
22 occurred, and there was swelling of the brain itself.

23 There was also bleeding in the subdural space
24 around the brain. There were also fractures of the base of
25 the skull, that part on which the brain sits. There was a
26 defect, an entrance gunshot wound over the back of the head,
27 and it was again internally beveled, indicating that was the
28 entrance gunshot wound.

29 There was an exit gunshot wound over the right

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1 orbital plate; that is, a thin bony structure that provides
2 a cover for the eye socket, in this case on the right side.
3 And there were multiple fractures in addition to those over
4 the base of the skull.

5 Q. And again, did you as a part of your procedure,
6 take photographs and do diagrams?

7 A. I did, Counselor.

8 Q. Dr. Hayne, I would like to hand you Exhibit 72 and
9 ask if you can identify that?

10 A. Yes, Counselor. There are five sheets. One shows
11 old injuries on the decedent. One shows medical
12 intervention. The third shows what are called periorcular
13 hematomas; that is, that there is bruising around the eyes.
14 I described it as subacute; that is, that they had occurred
15 and the individual had survived for a period of time. And
16 they are a product of the fractures of the orbital plates,
17 the thin bony structures covering the eyes allowing for
18 blood to seep into the soft tissue around the eyes and
19 produce what is commonly called raccoon eyes around both the
20 right and left eyes in the soft tissue where there are large
21 contusions or bruises of that site. That is a product of
22 the gunshot wound.

23 The fourth sheet shows the wound track entering on
24 the back of the head exiting in the area of the right
25 eyebrow.

26 And the fifth and last sheet shows a frontal and
27 rear view of the face. It shows the entrance gunshot wound
28 on the back of the head, and it shows the exit gunshot wound
29 in the area of the right eyebrow, Counselor.

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1 Q. All right. And Exhibits 56, 55, 54 and 53; can
2 you tell the jury what they show?

3 A. State's 56 shows the exit gunshot wound, and this
4 was taken in the early phase of the autopsy, and the medical
5 sutures are still in place in the eyebrow.

6 State's 66 is a closer view of the same showing
7 the exit gunshot wound in the area of the right eyebrow, and
8 again there are sutures placed by medical personnel at that
9 site.

10 State's 54 shows the entrance gunshot wound on the
11 back of the head, and again there are sutures placed by
12 medical personnel.

13 State's 53 is a closer view of the entrance
14 gunshot wound. Some of the sutures have been removed. The
15 area has been shaved, and there is an ABFO calibrated ruler
16 in place to document the size of the entrance gunshot wound,
17 sir.

18 Q. All right. Was this wound to Derrick Stewart,
19 were you able to make a determination as far as whether it
20 was a distant or a near contact wound?

21 A. I ruled this gunshot wound distant, Counselor.

22 Q. Okay, so that would mean that it would have been
23 from at least a foot and a half or further away; is that
24 correct?

25 A. That is correct, Counselor.

26 Q. And Dr. Hayne, were you able to--

27 A. -- but I did, I did, as a caveat though, I could
28 not exclude a near contact, but I saw no evidence of that.
29 Some of the hair had been shaved, so I could not come to a

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1 definitive conclusion that it was a, that I could exclude a
2 near contact, though I think it is a distant gunshot wound,
3 sir.

4 Q. All right, sir. And Dr. Hayne, were you able to
5 make a determination as an expert in the field of forensic
6 pathology as to the manner and cause of death of Derrick
7 Stewart?

8 A. I could, sir.

9 Q. What was that?

10 A. I ruled the manner of death as gunshot wound to
11 the back of the head-- I mean the cause of death, and the
12 manner of death is homicide, sir.

13 Q. All right. And let's just, I want to go backwards
14 real quick starting back with Derrick Stewart. The
15 photographs that you have, do they, in fact, show the
16 entrance and the exit wounds that you have described?

17 A. They do, Counselor.

18 BY MR. EVANS: Your Honor, may I pass those to the
19 jury?

20 BY THE COURT: Yes.

21 BY MR. EVANS:

22 Q. I will continue as we are passing them. Next, if
23 you would, take the photographs of Ms. Carmen Rigby.

24 A. Yes, sir.

25 Q. Do those photographs also show the entrance and
26 exit wounds and the part, some of the bruises to the arms
27 that you have described?

28 A. To the forearms, sir; yes.

29 BY MR. EVANS: May I pass these also, Your Honor?

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BY THE COURT: Yes.

BY MR. EVANS:

Q. Mr. Robert Golden.

A. Yes, sir.

Q. Do those photographs also show the wounds that you have described in your testimony?

A. It shows the entrance and exit gunshot wound, the entrance to the left ear, and it also shows the entrance gunshot wound to the top of the head, Counselor.

Q. All right, and before we pass these, if you would, one more time tell me; now as far -- you have designated these as two different wounds, two different bullet tracks?

A. Yes, sir.

Q. And as far as the one that you designated as one or two, is there any significance to that?

A. Only for the purpose of identification. It does not necessarily indicate the order of infliction of the two wounds.

Q. But as far as wound number one, where was the entry?

A. Entrance gunshot wound was to the left ear.

Q. Okay, and number two?

A. Entrance gunshot wound was to the top of the head.

Q. Now Ms. Bertha Tardy?

A. Yes, Counselor.

Q. Do those photographs truly and accurately show the wounds that you have described as far as Ms. Tardy?

A. They do, Counselor. They show the entrance and exit wounds from Ms. Tardy involving the gunshot wound to

Dr. Hayne - DIRECT - CROSS

1 the head.

2 (All the rest of the photographs referred to were
3 passed to the jury.)

4 Q. Dr. Hayne, I believe you stated you ruled that all
5 four of these people died from the manner of homicide?

6 A. The manner of death I ruled in each case as
7 homicide, sir.

8 BY MR. EVANS: Tender the witness, Your Honor.

9 CROSS-EXAMINATION BY MR. CARTER:

10 Q. How are you doing, Dr. Hayne?

11 A. Good afternoon, Counselor. Good seeing you again.

12 Q. Good seeing you too. Now distance versus close
13 proximity in terms of shooting a gun and shooting somebody
14 is not the same kind of distance we use in lots of
15 situations. My standing right here from, to you would
16 probably be considered distant in terms of shooting somebody
17 with a gun; is that correct?

18 A. That would be, Counselor, though normally people
19 would say we are in fairly close contact, but for purposes
20 of using firearm analysis distances, it would be a distant
21 gunshot wound.

22 Q. Yes, sir. What about from here to you?

23 A. It would still be a distant gunshot wound, sir.

24 Q. Here?

25 A. It would still be a distant gunshot wound.

26 Q. Okay.

27 A. Essentially there is a contact gunshot wound when
28 the muzzle is in close proximity to the target. It is a
29 near contact gunshot wound when there is tattooing, smudging

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1 or flame injury. And that can usually carry out to a
2 distance of, with a handgun up to approximately two and a
3 half feet. Anything greater than that when those findings
4 are absent, then it's a distant gunshot wound. So a distant
5 gunshot wound essentially for a handgun is anything greater
6 than two and a half feet or more.

7 Q. Yes, sir. Dr. Hayne, did you actually visit
8 Tardy's Furniture store?

9 A. I did, sir.

10 Q. Is that something that you customarily do when you
11 do autopsies or make findings as to cause and manner of
12 death?

13 A. It is not routine; no, Counselor.

14 Q. Was there any particular reason you did this time
15 that you recall?

16 A. I was asked to, and I thought there may be some
17 interest, though it did not contribute specifically to the
18 findings of the autopsies.

19 Q. Who asked you? Was it Mr. Evans?

20 A. I believe so, Counselor.

21 Q. And correct me if I am wrong, but did you say that
22 as a result of going to Tardy's, that you didn't, your visit
23 didn't contribute much to -- strike that. Did going there
24 benefit you in any way in terms of doing your job in this
25 case?

26 A. In this particular case as far as to the rulings
27 of cause and manner of death, it did not, sir.

28 Q. Okay. Do you know if it benefitted the
29 investigation?

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1 A. I'm sorry?

2 Q. Do you know if it benefitted the investigation in
3 any way?

4 A. I don't know, Counselor.

5 Q. Now as to injuries to Ms. Rigby, I believe you
6 said to her shoulder, arm, forearm and maybe, I think maybe
7 to the face too that I didn't get?

8 A. Yes, sir. On the left side of the face, there
9 were small scrapes or scratches, medically called abrasions,
10 located over the left side of the forehead and left cheek.

11 Q. How certain are you medically or to a reasonable
12 degree of medical certainty that they happened during the
13 shooting or the altercation at Tardy's?

14 A. I'm at a reasonable medical certainty, Counselor,
15 they occurred at or about the time of her demise. I saw no
16 aging in those injuries. And to be perfectly frank, they
17 are consistent with a person falling, striking a hard
18 object.

19 Q. Okay. Is it also possible that they could have
20 happened, that it could have happened a few hours before the
21 shooting?

22 A. I couldn't exclude that, Counselor.

23 Q. Is it also possible that it could have happened
24 after she was deceased, or is that possible?

25 A. After she died?

26 Q. Yes, sir.

27 A. No, sir. The bruising would not have occurred.

28 Q. Now the work you do or the work you did in this
29 case did not reveal who the actual shooter or shooters were;

Steven Hayne - CROSS

1 is that correct?

2 A. No, Counselor. I do not address that issue. My
3 obligation is to determine cause and manner of death. The
4 identification of a perpetrator, that is left in the hands
5 of the law enforcement officers investigating the death and
6 ultimately to the District Attorney's Office and the grand
7 jury.

8 Q. Based on your observation of the crime scene and
9 your autopsies, you were not able to make any kind of
10 finding or determination about the state of mind of the
11 killer or killers, were you?

12 A. I did not render an opinion to that, Counselor.

13 BY MR. CARTER: One moment. I think I'm finished.
14 One second.

15 (Defense Counsel confer.)

16 BY MR. CARTER: We tender, Your Honor.

17 BY THE COURT: Anything else, Mr. Evans?

18 BY MR. EVANS: No, Your Honor. We would ask that
19 Dr. Hayne be excused.

20 BY THE COURT: You are free to go, Doctor.

21 BY THE WITNESS: Thank you, Your Honor.

22 WITNESS EXCUSED.

23 BY THE COURT: Who do you have next?

24 BY MR. EVANS: Barry Eskridge.

25 BARRY ESKRIDGE,

26 upon being called to testify as a witness by the State of
27 Mississippi, having first been duly sworn, testified as
28 follows, to-wit:

29 BY THE COURT: State your name, please.

Barry Eskridge - DIRECT
BY THE WITNESS: Barry Eskridge.

DIRECT EXAMINATION BY MR. HILL:

Q. Good afternoon, Mr. Eskridge. Would you tell the ladies and gentlemen of the jury how are you are employed, sir?

A. I'm the owner of MedStat Ambulance Service.

Q. Mr. Eskridge, how long have you been in that business?

A. About 26 years.

Q. Were you in the same business back in July, 1996?

A. Yes, sir. I was.

Q. If I could, I would like to direct your attention specifically to July 16, 1996, in the morning time of that day, and ask you if you got a call, a call that you still remember? And if you would tell us when you got that call and what the nature of it was, sir.

A. Yes, sir. We received a call to respond to Tardy Furniture Company on Front Street in Winona to at the time that we initially received the call, it was an unknown situation. I believe it was around 10:20, 10:21.

Q. Are you saying that when you got the call, you didn't actually know what you were responding to?

A. That is correct. The initial call came in that there was a problem. The dispatcher that initially took the 911 call, I don't believe, knew exactly what was going on.

Q. Okay. Now do you remember what time, pretty precisely what time you got that call?

A. Yes, sir. I believe our records indicated it was 10:20 that morning.

Barry Eskridge - DIRECT

1 Q. At 10:20 AM?

2 A. Yes, ma'am--sir.

3 Q. The morning of July 16, 1996?

4 A. Yes, sir.

5 Q. Besides yourself in the business, did you have
6 anybody working for you, other personnel?

7 A. Yes, sir. I had an ambulance crew on duty. It
8 was my ambulance crew, which was Bo Owens and Bruce Story
9 and then myself. I accompanied them. I didn't ride in the
10 ambulance with them. I followed them in my other vehicle to
11 the scene.

12 Q. All right, if I could ask, were all three of y'all
13 together or near each other--

14 A. --yes--

15 Q. --when the call came in?

16 A. Yeah, we were at our ambulance station which at
17 that time was located next to the bus station near Summit
18 Street and Highway 51 here in Winona.

19 Q. How long, Mr. Eskridge, would you estimate that it
20 took you to arrive? Once you got the call, how long did it
21 take you to get there?

22 A. Probably no more than a minute or two. I mean
23 it's in very close proximity to our station.

24 Q. Tell the ladies and gentlemen of the jury who
25 arrived first, your crew or yourself?

26 A. My ambulance crew did.

27 Q. Okay, and did you follow them up there?

28 A. Yes, I did.

29 Q. Right behind them?

Barry Eskridge - DIRECT

1 A. Yes, sir.

2 Q. Explain to us from the time of your arrival, just
3 give us some detail about who went in, what you saw?

4 A. Sure.

5 Q. And give us detail of that after you got the call
6 that morning.

7 A. The ambulance crew responded in the ambulance in a
8 lights and siren response mode. I was actually in my
9 personal vehicle following them to assist them, so they got
10 a little bit ahead of me by maybe 20 or 30 seconds. When I
11 arrived on the scene, the paramedic had already gone into
12 the store, and the driver was at the back of the ambulance
13 pulling the stretcher out of the back of the ambulance to go
14 inside the store. So I arrived probably 20 or 30 seconds
15 behind them.

16 Q. Okay. Did you assist the attendant with the
17 stretcher going in the store?

18 A. Yes, sir. I helped him get the stretcher out, and
19 we went on into the store. And my paramedic, Bo Owens, was,
20 I believe he was standing or kneeling beside the young boy
21 that was injured and was beginning to assist him.

22 Q. Okay. I'm going to show you, I'm putting S-2A
23 exhibit up on the easel there. Can you see that, sir?

24 A. Yes, sir.

25 Q. Can you tell us, do you recognize what that is a
26 photo of?

27 A. Yes, sir. That's the store front of Tardy
28 Furniture.

29 Q. Is that where you responded that morning that you

Barry Eskridge - DIRECT

1 testified about?

2 A. Yes, sir. That is correct.

3 Q. Do you see the front doors right there?

4 A. Yes, sir.

5 Q. Can you tell us is that, was your ambulance parked
6 in the front there?

7 A. Yes, sir. It was.

8 Q. And is that the door that you went in?

9 A. Yes, sir. It is.

10 Q. Tell us what city, what county and what state that
11 store is located in, please.

12 A. Winona, Mississippi. Montgomery County.

13 Q. Mr. Eskridge, I think you said when you got in
14 there, one of your attendants was standing near someone. Do
15 you know who that someone was?

16 A. It was the young boy who at the time I didn't
17 know, but I have learned since his name is BoBo Stewart.

18 Q. Okay. What was his condition when y'all arrived
19 on the scene?

20 A. He had a gunshot wound to the head. I believe he
21 was, I believe he was laying on his back.

22 Q. I mean was he still alive?

23 A. Yes, he was still alive. He was. He was
24 unconscious, but he was alive.

25 Q. Did you see anybody else in there, sir? I know
26 that you were giving attention to Mr. Stewart, but did you
27 see anybody else in there?

28 A. Yes, sir. Chief Johnny Hargrove was there as
29 well.

Barry Eskridge - DIRECT

1 Q. Okay, and I mean any other victims at the crime
2 scene?

3 A. Oh, yes, sir. There were three other victims, I
4 believe. There was another male and two females.

5 Q. All right now, did y'all remove anybody from that
6 scene?

7 A. The only one that we removed or disturbed was the
8 young male, BoBo Stewart, who we attended to and transported
9 to the hospital.

10 Q. And that was because he was still alive?

11 A. That's correct.

12 Q. Am I to infer from that then that the other three
13 victims were deceased on the scene?

14 A. Yes, sir. That is correct.

15 Q. Did any of y'all check them or--

16 A. Yes. We verified that they were deceased, and
17 there was no indication for us to provide any type of
18 resuscitative efforts. And we attended to the patient who
19 did have the vital signs.

20 Q. Did you see anything that you thought was
21 significant, that might be significant in the investigation
22 of this case on the floor around any of those, near any of
23 the deceased people that were on the floor?

24 A. Yes, sir. When we initially approached
25 Mr. Stewart, I knelt down beside him, and I noticed, I guess
26 in the layout of the store, just to the south of him there
27 were some footprints that appeared to be made in blood. And
28 there were a couple of shell casings and I believe one
29 unspent shell lying beside his head. When I observed that,

Barry Eskridge - DIRECT

1 I told my ambulance crews and pointed it out to the Chief
2 that it was there and directed them to stay away from it.

3 Q. Okay. Now I don't know -- did you work in any
4 place else? Did you do emergency response work in any place
5 besides Winona prior to doing it here in Winona?

6 A. Yes, sir. Just prior to that, myself and also my
7 paramedic, Bo Owens, were paramedics with the City of
8 Jackson Fire Department.

9 Q. Okay. Had y'all been to multiple crime scenes--

10 A. --oh, yes, sir--

11 Q. --prior to this one?

12 A. Yes, sir. We had actually attended a number of in
13 services and events. We were employees of the City of
14 Jackson for the Jackson Police Department. Routinely, in
15 service does some crime scene management and things that we
16 should look out for when we deal with that type situation.

17 Q. Now what was it that you saw on the floor? Say
18 that to me again, please.

19 A. The bloody footprints--

20 Q. -- right--

21 A. And the shell casings.

22 Q. Okay. I have a photograph that I want to show
23 you, Mr. Eskridge. This is State's Exhibit number 13.
24 Would you just look at that, please, and tell us what that
25 is if you know.

26 A. There is two deceased persons still on the scene,
27 and there is the, the location where we picked up
28 Mr. Stewart and the blood that was surrounding his body when
29 we picked him up.

Barry Eskridge - DIRECT

1 Q. Okay, now that location, is there an article of
2 clothing in or near--

3 A. Yes, sir.

4 Q. -- blood where he was?

5 A. A baseball cap.

6 Q. What color is it?

7 A. Blue.

8 Q. And let's see. Mr. Eskridge, I want to point out
9 to you State's Exhibit number 13A. Do you see that right
10 there?

11 A. Yes, sir.

12 Q. Is that an enlargement of the photograph you have
13 got in your hand there?

14 A. Yes, sir. That's correct.

15 Q. Okay, I'm going to put it up here just for a
16 minute and call your attention to this photograph, State's
17 Exhibit number 13A, right here in the, would be the lower
18 left hand corner. Do you see that?

19 A. Yes, sir.

20 Q. And there is the, I think the blue baseball cap,
21 and that may be a red bill on it. I can't tell.

22 A. Yes, sir.

23 Q. Does this photograph show some of the footprints
24 or shoe tracks, you may call it, that you saw there on the
25 scene?

26 A. Yes, sir. Just below the baseball cap there is
27 one--

28 Q. --Would you come point that out, please.

29 A. Right here, and if my recollection is correct, I

Barry Eskridge - DIRECT

1 think there were some more tracks kind of coming toward this
2 direction.

3 Q. Okay.

4 A. Southward from this also.

5 Q. Now when you saw that track there, what is this
6 large red puddle looking right there? What is that?

7 A. That's blood.

8 Q. And is that where Derrick was, BoBo?

9 A. Yes, sir.

10 Q. Did your ambulance crew, were you in with them?
11 Could they have made that track?

12 A. They did not make the tracks in my presence. When
13 we first -- I immediately noticed it when I walked up to the
14 body and instructed my crews, and I identified it to Chief
15 Hargrove, and no one got near that while I was there.

16 Q. And that was because you, because of your crime
17 scene training and all?

18 A. Yes, sir. Yes, sir.

19 Q. And you let Chief Hargrove know that you saw it
20 there?

21 A. Yes, sir.

22 Q. And did you, while you were there, did you keep
23 your eyes on that track?

24 A. Yes, sir.

25 Q. Okay, you can have your seat back up there.

26 A. (Witness resumes the witness stand.)

27 Q. Now you said you saw some firearms evidence on the
28 floor?

29 A. Yes, sir. There was, I believe there was maybe

Barry Eskridge - DIRECT

1 one or two spent casings, and then there was one shell that
2 was a complete bullet.

3 Q. A live round?

4 A. Correct.

5 Q. Okay, I wanted to pursue just a little bit
6 further. You pointed out to us that stain on the floor and
7 the shoe track that you observed. I had asked you,
8 Mr. Eskridge, if you stepped in that blood. Did you step in
9 the blood down here?

10 A. No, sir. I did not.

11 Q. And you said to your knowledge, none of your
12 employees did?

13 A. That's correct.

14 Q. Did anybody check footwear of all responders that
15 morning, all of your crew? You have told us who they were.
16 I think you said Mr. Bo?

17 A. Owens.

18 Q. Owens, and who was the other guy with you?

19 A. Bruce Story.

20 Q. Bruce Story. Were y'all's shoes checked and
21 double checked?

22 A. Yes, sir. They were.

23 Q. By the law enforcement investigators?

24 A. That is correct.

25 Q. Did you have any blood on your shoes?

26 A. No, sir.

27 Q. Or did your personnel?

28 A. No, sir.

29 (NOTE: There was loud coughing during that

Barry Eskridge - DIRECT

1 exchange.)

2 Q. Okay, I'm just going to repeat that. Your
3 personnel did not have any blood?

4 A. Not that I could see or that anyone told me they
5 did. The law enforcement agency checked--

6 Q. --Okay, and the soles of your shoes, what kind of
7 soles were on your shoes?

8 A. I had a pair of boots on that didn't have a
9 pattern on the bottom of them.

10 Q. Would it be fair to say those were slick soles?

11 A. Yes, sir.

12 Q. Okay. And how do you know that your personnel's
13 footwear was checked?

14 A. One of the highway patrol investigators - I think
15 it was Mr. Miller - contacted me pretty immediately after it
16 had happened, and at that time ambulance crews were at the
17 hospital. And I contacted them and told them to, I think, I
18 can't remember if I told them to remove their shoes or
19 protect their shoes or something, that he was on the way up
20 there to take a look at their shoes. And my recollection, I
21 can't remember if he checked them at the hospital or back at
22 the station, but he called me and arranged to meet them.
23 And he, from what I understand, met them at the hospital and
24 looked at them, and I believe he came back to the-- because
25 they transported the patient to Jackson afterwards. And I
26 believe after he checked them, he came to me - I was at the
27 ambulance station - and checked my shoes.

28 Q. Okay. Where did y'all first transport Derrick?

29 A. I believe--

Barry Eskridge - DIRECT

1 Q. --Did he go directly--

2 A. -- He first went to Tyler Holmes Hospital in
3 Winona.

4 Q. Okay. And then they further transported him to
5 Jackson?

6 A. Yes, sir. I believe they transported him to
7 University Medical Center.

8 Q. Now were you there when they loaded Derrick up?

9 A. Yes.

10 Q. And what, did y'all take care not to disturb the
11 scene when you removed him?

12 A. Yes, we did.

13 Q. Because I did not see any on the photos of the
14 blood where he was, I didn't see any big swipes or smears.

15 A. Right. We were -- we recognized immediately that
16 this was a major crime scene, and we voiced to each other
17 and we made it very well known that we needed to make sure
18 that we left intact everything that we could preserved while
19 we were removing him and getting him out. And we didn't
20 spend very much time at all in the store. We immediately
21 retrieved him, got him on the stretcher and got him out of
22 the store into our ambulance.

23 Q. Okay. And you said what law enforcement officer
24 was present when you arrived?

25 A. Chief Johnny Hargrove.

26 Q. Do you remember seeing Mr. Sam Jones at all up
27 there that day?

28 A. He was outside of the store, I believe, when we
29 first arrived. I didn't really know who he was or why he

Barry Eskridge - CROSS

1 was there until afterwards, and then I think someone told me
2 he had found them.

3 BY MR. HILL: Tender the witness.

4 CROSS-EXAMINATION BY MR. CARTER:

5 Q. Mr. Eskridge, the fact of the matter is the police
6 officer or sheriff's deputies did not check your shoes or
7 your employees shoes at the crime scene; is that correct?

8 A. No, sir.

9 Q. How much longer was it that your shoes got
10 checked? Do you have any idea? Was it a day later?

11 A. Oh, no. It was within an hour.

12 Q. Within an hour?

13 A. It was immediately. As soon as they could get up
14 there and--

15 Q. -- How long did you stay at the crime scene?

16 A. I stayed there probably about 15 minutes.

17 Q. Fifteen minutes. As a matter of fact, I think you
18 went, even after your employees had taken BoBo Stewart off,
19 isn't it a fact that you went back into the store with
20 Mr. Hargrove?

21 A. Yes, sir. I did.

22 Q. Were you asked to go back in with him?

23 A. I don't recall if he asked me to. The only people
24 that were there were Johnny and myself, and there was a
25 crowd growing. And we were trying -- well, one of the
26 things that we were concerned about is nobody knew where
27 Mr. Tardy was, and we were concerned that he may be
28 somewhere in the store as well. So I think Johnny and I
29 went back in and made a sweep around the store just to make

Barry Eskridge - CROSS

1 sure that he wasn't there. But also, people were gathering
2 out front, and I stayed there until other law enforcement
3 agencies and agents got there to help him pretty much
4 protect the scene to make sure nobody was coming in and out
5 and disturbing anything.

6 Q. Did he deputize you or--

7 A. No, sir.

8 Q. This was a rather gruesome and unusual scene, I
9 imagine, wasn't it?

10 A. Yes, sir. It was.

11 Q. Now did Mr. Jones go in with you all also?

12 A. No, sir. I never saw him in the store.

13 Q. Is it fair to say that you were the first person
14 that pointed out the footprints?

15 A. I was, while I was there, I was the only one that
16 pointed it out. I don't know what happened before I got
17 there.

18 Q. Now your employees who appraised you of the
19 situation or apprised you of the situation, they didn't
20 mention those foot tracks to you, did they?

21 A. No. They, we -- no, no one was really apprising
22 anybody. We all kind of discovered the situation at the
23 same time.

24 Q. Okay, but what I'm trying to be clear about, when
25 your employees -- I take it when you got there, they told
26 you a little bit about what they had come upon or seen when
27 they went in briefly, did they not?

28 A. I mean we all discovered it pretty much at the
29 same time. It wasn't anything that they went in to come out

Barry Eskridge - CROSS

1 to report to me. The paramedic walked in the door probably
2 30 seconds ahead of me, and when I walked in, it was pretty
3 obvious what was going on. There wasn't any reporting to me
4 what was going on. It was quite obvious.

5 Q. Okay. Now you said lots of people started
6 gathering around. I take it you mean outside the store and
7 not in the store?

8 A. Yes, sir. Outside.

9 Q. Okay. Did you see anybody making a list of the
10 people congregating out in front of the store?

11 A. No, sir.

12 Q. And at the time that you and Chief Hargrove went
13 in, there was to your knowledge no other officers there; is
14 that correct?

15 A. I did not see any; no, sir.

16 Q. Did not see any. And you said y'all, I believe,
17 walked around in the store to see if Mr. Tardy or maybe
18 someone else was there and you hadn't noticed yet?

19 A. That's correct. We walked around. The office is
20 in the back, and we walked around the edge of the store and
21 to the back where the furniture was because there was a lot
22 of furniture in there, and you couldn't see if someone was
23 behind the couch or what have you. And we talked around the
24 back to make sure no one was in the office.

25 Q. Did y'all locate the doors?

26 A. No, I did not myself.

27 Q. Were you able to determine how many doors were,
28 that the store had?

29 A. No, sir. I wasn't even trying to locate any

Barry Eskridge - CROSS

1 doors. All I was doing was looking for victims.

2 Q. People, okay. And you didn't see Mr. Hargrove go
3 to or open any doors, did you, while you were there?

4 A. (No immediate response.)

5 Q. Did you see it?

6 A. I don't recall seeing him, but I don't know
7 whether he did or not.

8 Q. Okay. Now did you also, once you were outside,
9 did you walk around the store as well?

10 A. No. As soon as the other law enforcement
11 officials arrived, I left. That was just, you know, 10 or
12 15 minutes after the event occurred.

13 Q. Did you see Chief Hargrove or any officers going
14 to nearby stores or businesses and talking to people?

15 A. If I can recall, I believe someone went to the
16 Coast to Coast hardware store that was next door because I
17 believe, if I'm not mistaken, the gentleman who originally
18 was there had left and had gone up to that hardware store or
19 something. If I can remember, I think somebody might have
20 walked up -- I don't know if it was Hargrove or one of the
21 other officers when they first arrived, had walked up to the
22 store.

23 Q. Was Sheriff Hargrove there when you left -- I mean
24 Sheriff Thornburg there when you left?

25 A. No, sir. I don't -- well, now I don't recall. I
26 was waiting on somebody to get there so I could leave, and
27 just as soon as other law enforcement guys got there, I took
28 off and went to my ambulance crews to help them prepare so
29 I'm not sure--

Barry Eskridge - CROSS

1 Q. --I understand--

2 A. --who the other ones were.

3 Q. I'm not trying to tie you down to anything. But
4 the first officers that arrived, do you know if they were
5 police officers or sheriff's deputies, if you recall? If
6 you don't recall, don't worry about it.

7 A. I don't recall.

8 Q. Did, did your employees have on tennis shoes, or
9 do you know?

10 A. I know, I know one of my employees had on a pair
11 of boots like mine if I can recall correctly because the,
12 the reason it sticks out in my mind is two of us had slick
13 sole boots on, and there was an issue about that there was a
14 pattern in the blood. And we ascertained pretty quickly it
15 couldn't have been those two because there was no pattern on
16 the boot. I can't recall what the other one had on. But if
17 I can recall correctly, I believe after they looked at it,
18 they could tell that it was nothing even close.

19 Q. Okay. One moment. At the time you left, to your
20 knowledge had anyone been into the crime scene other than
21 you, Chief Hargrove and possibly Mr. Jones before you got
22 there?

23 A. Of course, my ambulance crews.

24 Q. Ambulance crew. Anybody other than--

25 A. Those are the only ones that I was aware of.

26 BY MR. CARTER: Thank you. We tender.

27 BY MR. HILL: Nothing further from the witness,
28 Your Honor.

29 BY THE COURT: Is he finally excused?

Melissa Schoene - DIRECT
BY MR. HILL: Yes, sir.

BY THE COURT: You are free to go, Mr. Eskridge.

WITNESS EXCUSED

BY THE COURT: Ladies and gentlemen, we will take
a break at this time. We will start back shortly.

(FOLLOWING THE AFTERNOON RECESS ON NOVEMBER 29,
2007, TESTIMONY CONTINUED IN OPEN COURT WITH ALL COUNSEL,
THE DEFENDANT AND THE JURY ALL PRESENT.)

BY THE COURT: Who will you have next?

BY MR. HILL: Melissa Schoene.

BY THE COURT: Melissa Schoene.

(Witness enters the courtroom.)

BY THE COURT: She has not been sworn.

BY MR. HILL: No, sir. She has not been. She
didn't arrive until just a little while ago.

MELISSA SCHOENE,
upon being called to testify as a witness by the State of
Mississippi, having first been duly sworn, testified as
follows, to-wit:

BY THE COURT: State your name, please, ma'am.

BY THE WITNESS: My name is Melissa Schoene. My
last name is spelled S-C-H-O-E-N-E.

DIRECT EXAMINATION BY MR. HILL:

Q. Good afternoon, Ms. Schoene.

A. Good afternoon.

Q. If you don't mind, we will start out with you
telling the ladies and gentlemen of the jury where you
reside, what you are doing now, where you are and what you
are doing if you don't mind.

Melissa Schoene - DIRECT

1 A. Currently, I live in Atlanta, Georgia. I teach
2 chemistry and forensic science at Georgia Perimeter College.
3 Prior to that, I was employed by the Mississippi Crime
4 Laboratory in the capacity of a forensic scientist and crime
5 scene analyst.

6 Q. Ms. Schoene, if you will, would you tell the
7 ladies and gentlemen of the jury about your educational
8 background, please.

9 A. Sure. I earned a Bachelor's degree in criminal
10 justice from the University of Alabama and a Master's degree
11 also from the University of Alabama in the field of organic
12 chemistry.

13 Q. And would you tell us how you were employed back
14 in July of 1996?

15 A. Yes, sir. In July of 1996, I was employed as a
16 forensic scientist and crime scene analyst with the
17 Mississippi Crime Laboratory in Jackson.

18 Q. How long in July of '96, how long had you been
19 working with the crime lab?

20 A. In July of '96, I had been with the crime lab for
21 approximately five years, and prior to that, I was with the
22 Alabama Department of Forensic Science and Medical Examiners
23 Office for approximately two years.

24 Q. And what was your area of expertise in July of '96
25 at the Mississippi Crime Lab? What was your duty assignment
26 and specialty there?

27 A. I was assigned to the trace evidence section, and
28 I was also assigned to, as a member of the violent crime
29 scene response unit.

Melissa Schoene - DIRECT

1 Q. And had you had any training and on the job type
2 training, seminars and that stuff? In addition to your
3 formal education, had you had any specific training in the
4 area of crime scene response and trace evidence? And if so,
5 would you kind of lay that out for us, please?

6 A. Yes, sir. My training consisted of an
7 apprenticeship type training program where I worked very
8 closely with a senior scientist in the crime laboratory,
9 somewhat on the job training. In addition to that, I was
10 required to pass a series of proficiency tests in various
11 areas of evidence collection and evidence examination. I
12 have also attended numerous seminars and workshops
13 specifically geared toward evidence documentation,
14 collection and preservation.

15 Q. Now back in July of '96 as a member of the violent
16 crime scene response unit, had you participated in death
17 investigations before that time?

18 A. Yes. Prior to 1996, in addition to my crime
19 scenes and death scenes worked with the Alabama Department
20 of Forensic Science, that combined with my experience with
21 the Mississippi Crime Lab, I had worked approximately 500
22 violent crime scenes.

23 Q. Have you ever been qualified as an expert in the
24 area of forensic science and in crime scene investigations?

25 A. Yes, sir. Numerous times.

26 Q. Could you just give us a smattering of where, what
27 state-- courts in Mississippi, I take it?

28 A. Yes.

29 Q. Circuit Courts in the State of Mississippi?

Melissa Schoene - DIRECT

1 A. Yes, Circuit Courts in Mississippi as well as in
2 Georgia.

3 BY MR. HILL: Your Honor, at this time I would
4 tender this witness as an expert in crime scene
5 investigation and forensic science.

6 BY MR. CARTER: One moment, Your Honor. No
7 objection.

8 BY THE COURT: The Court accepts her as an expert
9 in that field.

10 BY MR. HILL:

11 Q. Okay, Ms. Schoene, would you tell us whether or
12 not you recall receiving a request to come to Winona,
13 Mississippi, on July 16, 1996, to assist in an investigation
14 here?

15 A. Yes, sir. I do. It was on a Tuesday. It was
16 before lunch time. The Director of the crime laboratory at
17 the time had called me from my office and asked if I could
18 respond and offer assistance to the Winona Police Department
19 and the Mississippi Highway Patrol criminal investigators.

20 Q. Okay, and I took it you traveled by automobile up
21 here from Jackson?

22 A. Yes.

23 Q. About what time did you arrive, please, ma'am?

24 A. I left the crime laboratory at 11:55 and arrived
25 on scene in Winona, I believe, approximately 1:15.

26 Q. And would you tell us what you did first when you
27 got here?

28 A. Yes. Upon arrival to this particular crime scene,
29 I did what is standard procedure which is speak with the

Melissa Schoene - DIRECT

1 investigators that are on site and that have been there. I
2 spoke with Police Chief Johnny Hargrove briefly, and he
3 escorted me into the Tardy Furniture store past the crime
4 scene barrier. He had told me that, given me the number of
5 people who had been in the crime scene at that time. Then I
6 walked through the furniture store, and he pointed out
7 various items of evidence, specifically footwear impressions
8 and casings and projectiles that they, that he had already
9 spotted.

10 Q. Okay, you talked about Chief Hargrove escorted you
11 in through the crime scene tape, and I'm going to direct
12 your attention to a -- if I can find it. Ms. Schoene, I am
13 putting a chart up on the board. Can you see that?

14 A. Yes, sir. I can.

15 Q. This is State's Exhibit 2A. Can you tell the
16 ladies and gentlemen of the jury if you recognize that store
17 front?

18 A. Yes, this is the exterior of the Tardy Furniture
19 store.

20 Q. Now you indicated that when you got there, it had
21 a crime scene barrier up?

22 A. Yes.

23 Q. What is it, if you see in that photograph there,
24 that would be what you would refer to as crime scene
25 barrier?

26 A. The yellow crime scene tape that you may be
27 familiar with that was on the outside of the store as well
28 as on the interior of the store.

29 Q. Okay, and you remember that being up when you got

Melissa Schoene - DIRECT

1 there?

2 A. Yes.

3 Q. Also, there is a front door apparently, what
4 appears to be a front door there. Do you recall that as
5 being an entrance way into the store where you were escorted
6 in?

7 A. Yes. The store was large, and it was divided into
8 two large areas. The north side or the side to the right
9 where you see these doors was where it looked like the
10 majority of business took place. And the other side, there
11 were not front doors that accessed that, and it also
12 contained furniture, but it did not seem to be as available
13 to customers.

14 Q. What else -- you said that Chief Hargrove escorted
15 you in, and he pointed out to you some trace or physical
16 evidence?

17 A. Uh-hum.

18 Q. Did you see anything else in the store? What, if
19 any, victims, crime scene victims did you see there?

20 A. Upon my entry into the store, I could see one
21 white female at the very back of the furniture store. As I
22 proceeded onward towards the center island where the cash
23 register or the cash counter and where the business appeared
24 to be transacted, there were a series of partial bloody
25 footwear impressions, another white female lying on her
26 stomach and a black male lying on his side with his back up
27 against the counter. There was a pool of blood between
28 them. There was also another pool of blood where it
29 appeared that there was at one time a victim, but there was

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1 no one there upon my arrival. So I saw three, three
2 deceased victims.

3 Q. Do you recall seeing an article of clothing at the
4 spot where you said it appeared that somebody had been?

5 A. I'm not quite sure. There was, there was a shoe,
6 and there was various other items of physical evidence, but
7 in particular, a loose item of clothing.

8 Q. Okay.

9 A. I'm not, I don't recall.

10 Q. I'm going to show you another set of photographs.
11 I'm going to put this up on the board, on the easel, and you
12 may need to -- I'm not sure if you can see it from where you
13 are sitting. If you can't, let me know. I may have to turn
14 this around.

15 A. Yes.

16 Q. Do you mind stepping down just a little bit?

17 A. No. (Witness steps down in front of jury box.)

18 Q. Let me check and make sure.

19 A. Would you like me to tell you what I see in these?

20 Q. First of all, do you recognize those photographs?

21 A. Yes. These appear to be enlargements of crime
22 scene photographs that I took upon my arrival at Tardy
23 Furniture. This was probably a good place to start. This
24 is the counter that I had mentioned. May I turn it this way
25 where they can see?

26 Q. Feel free to turn that around.

27 A. Can y'all see that okay? Okay, sorry. This is
28 the counter that I had mentioned. This is the second female
29 victim that I had mentioned. This is the black male with

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1 his, lying with his back up against the counter. This is
2 Carmen Rigby and Robert Golden. This is the pool of blood,
3 and this is the baseball cap that presumably came from the
4 fourth victim who was not present when I arrived.

5 Q. That was the article of clothing--

6 A. Okay, this is the article of clothing. What you
7 can see is you can actually make out a portion of the bloody
8 footwear impression right here. The picture above this,
9 which is State's Exhibit 15A, is a set of car keys that we
10 believe belonged to Carmen Rigby. They were about 6 inches
11 or so from her hand. Here is the pool of blood also.

12 Here is another picture of Carmen Rigby with her
13 keys. You can see the reference there, and these are the
14 feet of Carmen Rigby. This is her, one of her shoes near
15 the pool of blood and the baseball cap.

16 Q. Now you have made reference to this enlargement,
17 State's Exhibit 12A?

18 A. Yes.

19 Q. And you have made a reference to State's Exhibit
20 14A?

21 A. Yes.

22 Q. And I'm going to show you -- I'm going to let you
23 get back on the stand there.

24 BY MR. HILL: Your Honor, this witness has
25 identified State's Exhibit 12A and 14A, and I would ask
26 that they be admitted. I don't think I did that
27 earlier. If we did, they haven't been marked, and I
28 would ask they be now marked for evidence.

29 BY MR. DE GRUY: No objection.

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BY THE COURT: Okay, let them be marked.

(ENLARGEMENTS OF PHOTOGRAPHS MARKED PREVIOUSLY AS
STATE'S EXHIBITS S-12A AND S-14A FOR IDENTIFICATION WERE NOW
RECEIVED IN EVIDENCE.)

BY MR. HILL:

Q. Ms. Schoene, I'm going to hand you some additional
photographs and ask you to look at them. This is State's
Exhibit 11, State's Exhibit 12. This is State's Exhibit 25.

A. Would you like to keep these in order?

Q. It's not necessary.

A. Okay.

Q. State's Exhibit 21. This is State's Exhibit 22,
and I am also going to hand you State's Exhibit 24, 19, 18.
And that is 14; you have already identified that. I'm going
to hand you State's Exhibit number 17, State's Exhibit 23.
That is 10, State's Exhibit number 10. Do you recognize
what is shown in those photographs? As I handed them to you
and you looked at them, were you able to recognize them as
accurate depictions of the scene that you saw that day?

A. Yes. All of the photographs that you handed me
are true and accurate depictions of the scene as it appeared
in July of '96.

Q. Well, the reason I handed that to you, the
photographs that we have exhibited there, I don't think they
show Ms. Tardy, and I was going to ask you--

A. There are some here that do.

Q. Right. I was going to ask you about those. I'm
going to ask, if you will, to look at the photographs that
I'm putting up here for you now, and I will ask you if these

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1 photographs show anybody that you were able to identify at
2 that time. And if you would describe if they show-- who
3 they show and where she is located in the store. Would you
4 tell us who those photographs are, what is depicted--

5 A. -- These five photographs depict Bertha Tardy.
6 She was in the back of the store. As I showed you, the
7 front doors that you walk in, if you were to walk in the
8 front door of the store, if you continued in a straight line
9 back to the back of the store, Ms. Bertha Tardy was located
10 very closely to an office that is back there. And she is
11 lying on the ground face down.

12 Q. Okay. Now I believe you took a majority of those
13 photographs yourself, did you not?

14 A. Yes, sir. I did.

15 Q. Did you do any, what they call a crime scene
16 sketch or a crime scene diagram while you were there to take
17 note of the way the scene looked when you originally
18 observed it?

19 A. Yes, sir. I did. Generally we document crime
20 scenes in three ways. We write a narrative of what we see.
21 We take photographs as you have seen, and the third and
22 final way that we document crime scenes is to draw a sketch.
23 And when we are on scene, we typically draw a fairly rough
24 sketch, the best that we can do there without using
25 templates. We draw what we see, take measurements and
26 reference evidence that is documented and collected on our
27 rough sketch, excuse me, at the crime scene. We document
28 those on the rough sketch.

29 Q. Okay, and you said you prepared one of those?

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1 A. Yes, I did.

2 Q. And I believe you have previously furnished us
3 with that; is that correct?

4 A. Yes, I have.

5 BY MR. HILL: Let me show this to Counsel over
6 here.

7 BY MR. HILL:

8 Q. Ms. Schoene, I'm going to show you State's Exhibit
9 39 and State's Exhibit 51. I'm going to ask you about
10 State's Exhibit 51 first. Would you look at those and tell
11 us if you recognize them and if so, how you recognize them
12 and what they are?

13 A. I do recognize them. State's Exhibit 51 is the
14 rough sketch that was prepared at the crime scene. State's
15 Exhibit number 39 is a more polished sketch that was
16 recreated once I returned to the crime laboratory.

17 Q. Okay. And are those your original drawings or
18 accurate reproductions or copies of them?

19 A. Yeah, these are photocopies of my original
20 drawings, yes.

21 Q. And are they completely accurate as if you had, as
22 when you drew them or had them drawn at that time?

23 A. Well, they are not to scale. Other than that,
24 they are an accurate representation.

25 Q. But you didn't intend them to be to scale when you
26 drew them; is that correct? I mean you just drew them to
27 refresh your memory?

28 A. That's exactly right.

29 BY MR. HILL: All right, Your Honor, this is

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State's Exhibit--

Q. Tell us which one is which here?

A. State's Exhibit 51 is the rough sketch. State's Exhibit 39 is the polished sketch.

BY MR. HILL: We would ask that they be received into evidence at this time, Your Honor.

BY THE COURT: Any objection?

BY MR. CARTER: No objection.

BY THE COURT: Let them be admitted.

(ROUGH SKETCH PREVIOUSLY MARKED AS STATE'S EXHIBIT S-51 FOR IDENTIFICATION AND POLISHED SKETCH PREVIOUSLY MARKED AS STATE'S EXHIBIT S-39 FOR IDENTIFICATION WERE NOW BOTH RECEIVED IN EVIDENCE.)

BY MR. HILL:

Q. Ms. Schoene, I'm next going to hand you State's Exhibit number 40 and ask you to look at that and see if you recognize that, please.

A. Yes, I recognize this. State's Exhibit number 40 is the key or legend that I typed up to go with the polished sketch.

Q. And when you say a key or a legend, that lists out what you had drawn on the sketch?

A. Right. For example, when I drew the sketch for the victims at the time, I might have numbered the victims or numbered the evidence. And here I more, have a more descriptive explanation of what the items of evidence are typed up on this piece of paper as they correspond to the sketch.

Q. And I also have, I'm going to put this up, I

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1 believe, if that won't knock you--

2 A. -- well, we will see.

3 Q. --over. This is State's Exhibit 39A. Can you
4 tell us what 39A is, please?

5 A. State's Exhibit 39A is an enlargement of my
6 polished sketch.

7 Q. Other than just being enlarged, it's the same as
8 the one the Court just admitted?

9 A. Yes.

10 BY MR. HILL: Your Honor, we would ask that 39A be
11 received.

12 BY MR. CARTER: No objection.

13 BY THE COURT: With no objection, let it be
14 admitted.

15 (ENLARGEMENT OF POLISHED SKETCH PREVIOUSLY MARKED
16 AS STATE'S EXHIBIT S-39A FOR IDENTIFICATION WAS NOW RECEIVED
17 IN EVIDENCE.)

18 BY MR. HILL:

19 Q. Ms. Schoene, if you don't mind, I'm going to ask
20 you if you will, and I apologize; ask you to step down one
21 more time over here to the charts.

22 A. (Witness complies.)

23 Q. I'm just going to hand you this little marker and
24 use that for a pointer if you will, if you need to.

25 A. Okay.

26 Q. While you are there, we have got, we have these
27 enlargements as well. This is State's Exhibit number 40A,
28 and I have a 40B. Would you look at that, Ms. Schoene, and
29 tell us if you recognize that?

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1 A. Yes. State's Exhibit 40A is an enlargement of the
2 first page of the key that goes with the polished sketch.

3 Q. Okay, and I have State's Exhibit number 40B.
4 Would you tell us what that is?

5 A. Yes. State's Exhibit number 40B is the second
6 page of the two pages of the key that go with the polished
7 sketch.

8 BY MR. HILL: And Your Honor, before I go further
9 into her testimony about the sketch and legend, I would
10 ask that State's 40A and B be received. That is just
11 simply blow ups.

12 BY THE COURT: Let them be admitted.

13 (BLOWUPS OF PAGES ONE AND TWO OF STATE'S EXHIBIT
14 S-40, WHICH IS THE KEY AND LEGEND FOR THE SKETCH IN EXHIBIT
15 S-39, THAT HAD PREVIOUSLY BEEN MARKED FOR IDENTIFICATION
16 WERE NOW RECEIVED IN EVIDENCE AS STATE'S EXHIBITS S-40A AND
17 S-40B.)

18 BY MR. HILL:

19 Q. Ms. Schoene, I'm going to ask you and you can
20 have -- I don't know if you have a copy, but here is your
21 legend that you can hold in your hand. I would ask you, if
22 I could, if you would just describe what this is and what it
23 shows. You have got different numbers on it, and you have
24 got some body figures on it numbered. Would you just kind
25 of go through that.

26 A. You can see this okay? Certainly; I will. What
27 you are seeing here is the north side of Tardy Furniture
28 store. I had said earlier that when you walk in the store,
29 the store is somewhat divided. There is a portion on the

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1 left and a portion on the right. This is the portion on the
2 right. This slope downward connects the two portions to one
3 another. Now this crime scene tape here, this crime scene
4 tape barrier is the first thing that you would come to if
5 you were walking in the front door. Okay, so if you walk in
6 the front door, you will come into the crime-- you will hit
7 the crime scene tape. If you continue onward, there is
8 three partial bloody footwear impressions that I have
9 labeled A, B and C here.

10 Victim number 1 is Robert Golden. Victim number 2
11 is Carmen Rigby. Victim number 3 is Bertha Tardy. Now the
12 other numbers and symbols that you see on the sketch -- 5,
13 1, 2, 3, 4 and 5, those correspond to casings that were
14 collected, casings that ejected from some type of gun. The
15 other -- let's see. 2B, I believe 1B and 2B are projectiles
16 or bullets. The location of 1C and 2C here indicate the
17 position of projectile fragments or pieces of bullets.

18 What else you might, what I have mentioned here,
19 if you continue on back here, this open door, that was the
20 door to Bertha Tardy's office in the very back of the
21 building. And this area here was the white counter that you
22 saw earlier in the photograph. There was a purse, an open
23 purse here in the middle and various, you know, paperwork
24 and drawers and that sort of thing that were located behind
25 the counter.

26 Q. Now you indicated that you saw some footwear
27 impressions. What is a footwear impression?

28 A. Well, a footwear impression is left on a surface.
29 You know, you have positive impressions or negative

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1 impressions. This was actually a positive impression. What
2 that means is that I saw evidence of someone walking through
3 a substance, which I believed to be blood, and when they put
4 their foot in that substance, lifted it and placed it back
5 down, then they left a footwear impression. Well, this was
6 actually a partial footwear impression. None of these were
7 entire, entire impressions. What I mean by partial is it
8 might be half of a shoe impression, but I could distinctly
9 make out at least three different partial footwear
10 impressions.

11 Q. And you labeled those on your diagram?

12 A. Yes, sir. I labeled those A, B and C, with A
13 being the footwear impression that is the closest to the
14 front door, and C being the partial footwear impression that
15 is closest to the pool of blood.

16 Q. Now you have numbers I see circled 1, 2, 3, 4 and
17 5.

18 A. Uh-hum.

19 Q. Can you tell us what those represent, please?

20 A. Yeah, as I said previously, those correspond to
21 casings that were ejected from--

22 Q. --Could you tell us what is a casing?

23 A. A casing is, if you think of a cartridge or a live
24 round, a live round is something that -- the casing holds a
25 bullet. And so if you fire a gun, a casing can be
26 injected-- ejected, excuse me, ejected from the weapon and
27 the bullet or projectile is what I have labeled here, bullet
28 or projectile comes out of the barrel of the weapon.

29 Q. It may be inaccurate, but some people might call

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1 those a hull?

2 A. Hull, yes. Hull.

3 Q. And you found five of those?

4 A. Yes, I did. I found five and again, they are
5 labeled here: 1, 2, 3, 4, and 5.

6 Q. Now you indicated, I believe, that you found a
7 live round or an unspent cartridge or bullet, a live bullet?

8 A. Yes, I did. And that's, I call that a cartridge
9 or a live round. It's a bullet that hasn't been fired, so
10 it has the bullet and the casing with it. That is on this
11 sketch 1A located close to Bertha -- excuse me, close to
12 Carmen Rigby.

13 Q. All right. Thank you, ma'am. You can get back on
14 the witness stand.

15 A. (Witness resumes witness stand.) If I could point
16 something else out that I forgot on this?

17 Q. Yes, ma'am.

18 A. All the evidence that you see here that is on this
19 sketch, I collected it as a part of my analysis of the crime
20 scene. So each of these pieces of evidence that I have
21 labeled on this sketch corresponds to an item of evidence
22 that I placed in a box and sealed, or in the case of the
23 footwear impressions, that I photographed. So all of the
24 evidence that you see here was collected by me and brought
25 back to the crime laboratory for analysis.

26 Q. Okay. Speaking of your work in photographing the
27 footwear impressions, I want to show you another series of
28 photographs if I may. Let me show them to Defense Counsel
29 first.

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(Pause while Defense Counsel looks at

photographs.)

BY MR. HILL:

Q. Ms. Schoene, first of all, I'm going to show you two small black and white photographs. They are marked State's Exhibit 45 and State's Exhibit number 46 for identification. Would you look at those, tell us if you recognize them, and what they are, please?

A. Yes. Those are both photographs that I took at the crime scene after the victims had been removed. What they depict are the footwear impressions from two different angles of, excuse me, the partial footwear impressions that are on the sketch there as A, B and C. State's Exhibit 46 was taken from this ramp so you, to get a reference there. And State's Exhibit 45 was taken from the front of the store where you can see the opening of Bertha Tardy's office in the background.

BY MR. HILL: May we have these -- we offer them and ask they be received into evidence, Your Honor.

BY MR. CARTER: No objection.

BY THE COURT: Let them be admitted.

(PHOTOGRAPHS PREVIOUSLY MARKED AS STATE'S EXHIBITS S-45 AND S-46 FOR IDENTIFICATION WERE NOW RECEIVED IN EVIDENCE.)

BY MR. HILL:

Q. Ms. Schoene, these are black and white photographs. Is there a reason that you took black and white as opposed to a color photograph of these?

A. Yes, there is. Actually I took both. Color

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1 photographs are used for general crime scene documentation.

2 When it is necessary to document evidence for comparison

3 purposes, we use black and white film because it's, when

4 you enlarge black and white film, there is much more

5 contrast, so you can see small defects. For example, we

6 would use black and white photography if we were going to

7 photograph footwear impressions, also bloody fingerprint

8 impressions and any other type of evidence that you can't

9 actually cut and remove and take back to the crime

10 laboratory. So black and white film is used for examination

11 quality photography.

12 Q. And I see that in State's Exhibit 45, you have got

13 these numbered markers or perhaps I should say lettered

14 markers on the floor. And what was the purpose of the white

15 markers at A, B and C?

16 A. The white markers correspond to the three

17 different partial footwear impressions that I observed

18 there.

19 BY MR. HILL: May I have these passed to the jury,

20 Your Honor?

21 BY THE COURT: Yes.

22 (State's Exhibits S-45 and S-46 were passed to the
23 jury.)

24 BY MR. HILL:

25 Q. Ms. Schoene, I'm now going to hand you a series of

26 four exhibits. They are numbered State's Exhibit 47, 48, 49

27 and 50, and I'm going to hand them to you and ask if you

28 would just take a minute to look through them, see if you

29 recognize them?

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1 A. Yes. These are all enlargements of the
2 photographs that I had taken of the bloody footwear
3 impressions.

4 Q. Tell us, are they different footwear impressions,
5 all of the same one, or--

6 A. Well, this State's Exhibit 50 corresponds to, I
7 believe this is footwear impression C. And State's Exhibit
8 47 is impression A.

9 Q. And did you, is there a reason that you took --
10 you took several of these photographs; is that right?

11 A. Yes. Actually, and I did not make these
12 enlargements. These enlargements were made by Joe Andrews,
13 who actually did the footwear comparison.

14 Q. But those are photographs that you took?

15 A. Yes. Well, these are enlargements of photographs
16 that I took.

17 Q. Enlargements of photographs that you took?

18 A. Right. Right.

19 Q. Okay, and do these 48, 49-- I'm sorry; let me see
20 the numbers. 47, 48, 49 and 50, do they correspond to 46
21 and 47 that we just showed, the little back and whites that
22 we just passed to the jury?

23 A. Oh, yes. Yes, they do.

24 Q. These are enlargements of those footwear
25 impressions or some of those footwear impressions?

26 A. Those are enlargements of the same footwear
27 impressions, but those aren't enlargements of the same
28 photographs.

29 Q. Yes, ma'am. Same impressions?

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1 A. Right. Yes.

2 Q. So this is, when you look at this, you can see the
3 footwear impression that you photographed in the small
4 photographs?

5 A. Right. These enlargements are used for comparison
6 purposes. This is the result of the examination quality
7 photography that I had mentioned earlier for using the black
8 and white film so the enlargements, the examiner can see
9 more of a contrast. So that is what these are. Yes, these
10 do correspond to the footwear impressions that are on that
11 sketch.

12 BY MR. HILL: May we have these received into
13 evidence, Your Honor?

14 BY MR. CARTER: No objection.

15 BY THE COURT: Let them be admitted.

16 (BLACK AND WHITE ENLARGEMENTS PREVIOUSLY MARKED AS
17 STATE'S EXHIBITS S-47 THROUGH S-50 FOR IDENTIFICATION WERE
18 NOW RECEIVED IN EVIDENCE.)

19 BY MR. HILL:

20 Q. Okay, Ms. Schoene, you also, you further indicated
21 that in addition to the footwear impressions that you
22 photographed, that you recovered some items of physical
23 evidence. And I think you said there were some casings that
24 you collected if I recall?

25 A. Right. I collected casings, projectiles and
26 fragments.

27 Q. I'm going to hand you, these are five small white
28 boxes. They are numbered for identification as State's
29 Exhibit 88, 89, 90, 91, and 92. I guess I will put them

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1 there. If you would examine those, please, ma'am; see if
2 you can identify them, and we will ask you one at a time
3 about them.

4 A. Yes, I can identify each of these by my initials,
5 my handwriting, the Mississippi Crime Laboratory seal, and
6 the Mississippi Crime Laboratory case number.

7 Q. Okay, and just tell us what they are, the five of
8 them as a group.

9 A. Individually?

10 Q. No, what are they? They are the five casings you
11 recovered?

12 A. Yes. These are, contained in these boxes are the
13 five casings that you see depicted on the sketch -- 1, 2, 3,
14 4, and 5. These five casings correspond to those.

15 Q. Okay. Now I suppose what I need to get you to do
16 is to tell us, is to take, say for instance, let's talk
17 about State's Exhibit number 88. I would like for you, if
18 you can, just to tell us if you would, to come over here to
19 this board, and I will hand these exhibits to you.

20 A. Okay.

21 Q. And just let you point out where you found them if
22 you would.

23 A. Sure.

24 Q. And I'm going to start with 88. I will try to do
25 them in numerical order so we don't get them confused.
26 State's Exhibit number 88.

27 A. So your State's Exhibit 88 is my, is Mississippi
28 Crime Laboratory number 25. This is casing number 1 that
29 was collected from near Robert Golden. This box is this

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1 casing.

2 Q. Now did you look at those casings? Could you tell
3 by looking at it what caliber it was?

4 A. What I have written on the box is what the base of
5 the casing says, and it is CCINR .380 automatic.

6 Q. I'm going to hand you next State's Exhibit number
7 89. I ask if you can tell us what casing that is, please?

8 A. Yes. State's Exhibit 89 corresponds to crime
9 laboratory case number 26. This is casing number 2, which
10 is this casing, that was collected from near Robert Golden
11 as well.

12 Q. So you found two casings near Robert?

13 A. Yes. Well, near Robert and also the missing
14 victim here. There was a fourth victim that was already
15 gone.

16 Q. Right.

17 A. Yes. So in this general area right here, 1 and 2.

18 Q. They are actually though on your map, they are
19 actually closer to Robert?

20 A. Yes, they are.

21 Q. Thank you. That was 88 and 89. I hand you
22 State's Exhibit number 90.

23 A. State's Exhibit 90 corresponds to Mississippi
24 Crime Laboratory case number 27, and this is, this box
25 contains casing number 3, which was this casing. Casing
26 collected from near Ms. Carmen Rigby.

27 Q. Okay. State's Exhibit 91?

28 A. State's Exhibit 91 corresponds to crime laboratory
29 exhibit number 28, and it is on this sketch, casing number

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1 4. That was also collected near Carmen Rigby and Bertha
2 Tardy.

3 Q. I hand you, this is State's 92.

4 A. State's Exhibit 92 corresponds to crime lab case
5 number -- I actually can't read that. It looks like 29, and
6 it, this box contains casing number 5 which was collected
7 near the victim of Bertha Tardy.

8 Q. Now you referred to in your testimony about your
9 crime lab numbers. That is just the way y'all numbered them
10 when you got them into the lab; is that right?

11 A. Right. Every item of evidence that we collect and
12 submit to the crime lab receives its own exhibit number.

13 Q. So our numbers and your numbers are a little off?

14 A. Your numbers correspond to their trial, and our
15 numbers correspond to the crime laboratory.

16 Q. Okay, so you have showed us where you found all
17 those casings. Now you found some other trace evidence as
18 well; right?

19 A. Yes, sir.

20 Q. And I'm going to take these up, and before you sit
21 down, if you don't mind, I will hand you some of these
22 others.

23 BY MR. HILL: I would ask at this time, Your
24 Honor, that these 5 exhibits be received into evidence,
25 the 5 casings that the witness has just testified
26 about.

27 BY MR. CARTER: No objection.

28 BY THE COURT: Let them be admitted.

29 (FIVE SHELL CASINGS IN SMALL WHITE BOXES

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1 PREVIOUSLY MARKED AS STATE'S EXHIBITS S-88, S-89, S-90, S-91
2 AND S-92 FOR IDENTIFICATION WERE NOW ALL RECEIVED IN
3 EVIDENCE.)

4 BY MR. HILL:

5 Q. Ms. Schoene, if I could ask you now about, you
6 mentioned that you recovered some projectiles?

7 A. Yes.

8 Q. I'm going to hand you State's Exhibit number 83,
9 and see if you can identify that for us, please?

10 A. Yes. Your State's Exhibit 83 corresponds to crime
11 lab exhibit number 31, and this box contains projectile 1-B.

12 Q. Would you point out projectile 1-B, where that is
13 located on the chart?

14 A. It's located closest to victim Robert Golden.

15 Q. And as we can see, that is directly across from
16 Ms. Rigby.

17 A. Right. On the other side, that's correct.

18 Q. I hand you State's Exhibit 84 and ask you if you
19 recognize it, please?

20 A. Okay. Your State's Exhibit 84 corresponds to
21 crime laboratory case exhibit number 32, and what is
22 contained in this box is what is labeled as projectile 2-B.
23 It was the projectile that was collected from this position.

24 Q. Okay. Thank you, ma'am.

25 BY MR. HILL: We would ask that these two
26 projectiles be received into evidence, Your Honor.

27 BY MR. CARTER: No objection.

28 BY THE COURT: Let them be admitted.

29 (FIRED BULLET PROJECTILES LABELED AS 1-B AND 2-B

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1 PREVIOUSLY MARKED AS STATE'S EXHIBITS S-83 AND S-84 FOR
2 IDENTIFICATION WERE NOW RECEIVED IN EVIDENCE.)

3 BY MR. HILL:

4 Q. Ms. Schoene, I'm going to hand you a couple more
5 photographs. These are photographs -- this one is marked
6 State's Exhibit 98. This one is marked State's Exhibit 41.

7 A. Okay.

8 Q. Would you just look at those and see if you
9 recognize -- do you recognize those?

10 A. Yes, I do. State's Exhibit 98 corresponds to this
11 projectile, 2-B, and State's Exhibit 41 corresponds to
12 projectile 1-B.

13 Q. We would ask--

14 A. -- I believe both of those are photographs that I
15 took.

16 BY MR. HILL: We would ask that these photographs
17 be received, Your Honor.

18 BY MR. CARTER: No objection.

19 BY THE COURT: Let them be admitted.

20 (TWO SMALL PHOTOGRAPHS PREVIOUSLY MARKED AS
21 STATE'S EXHIBITS S-41 AND S-98 FOR IDENTIFICATION WERE NOW
22 BOTH RECEIVED IN EVIDENCE.)

23 BY MR. HILL:

24 Q. Ms. Schoene, I'm going to just leave this
25 photograph right there, and I'm going to put this chart
26 here. And I guess that's the way we have got it oriented.
27 State's Exhibit 41 that you just testified about while ago?

28 A. Uh-hum.

29 Q. We have this blow up. Is this an enlargement of

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1 State's Exhibit 41?

2 A. Yes.

3 Q. And that is not exactly the same, okay. While I
4 have got this up here, State's Exhibit 28; do you recognize
5 that? Do you recall that photo?

6 A. Yes. This is a photograph of Bertha Tardy's
7 glasses. What you see here are four, excuse me, three
8 enlargements of victim Bertha Tardy, of the victim that was
9 in the back of the store. What you see here are, I believe
10 it's her glasses.

11 Q. And tell us about if you recognize the
12 photographs; I am showing you 23A, 22A, 21A, and 20A. So
13 it's 20, 21, 22 and 23, and I'm going to just see if that
14 will ride like that.

15 A. This is a photograph of Bertha Tardy's shoulder
16 and head. This is her skirt with her feet. One of her
17 shoes was partially off, and this is an orientation
18 photograph so you can see the location of her body in
19 reference to the rest of the store.

20 Q. Okay. Is that the way it looked when you saw it?

21 A. Yes.

22 Q. When you were working the crime scene?

23 A. Yes.

24 BY MR. HILL: Your Honor, we would ask for the
25 introduction of State's Exhibit 20 and 20A,
26 corresponding 21, 22 and 23.

27 BY MR. CARTER: No objection.

28 BY THE COURT: Let them be admitted.

29 (PHOTO ENLARGEMENTS ON ONE LARGE BOARD PREVIOUSLY

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1 MARKED AS STATE'S EXHIBITS S-20A, S-21A, S-22A, AND S-23A
2 FOR IDENTIFICATION WERE NOW ALL RECEIVED IN EVIDENCE.)

3 BY MR. HILL: Also, Your Honor, we previously
4 mentioned, this is State's Exhibit 41A. I think we
5 have already asked that it be received. It is simply
6 an enlargement of 41.

7 BY THE COURT: Let it be admitted.

8 (PHOTO ENLARGEMENT PREVIOUSLY MARKED AS STATE'S
9 EXHIBIT S-41A FOR IDENTIFICATION WAS NOW RECEIVED IN
10 EVIDENCE.)

11 BY MR. HILL:

12 Q. Ms. Schoene, this is State's, I believe Exhibit
13 number 85 for identification. Could you tell us if you
14 recognize that, please, and what it is?

15 A. Yes. State's Exhibit 85 is crime laboratory
16 exhibit number 33, and this is the fragment collected near
17 the area of Carmen Rigby. This is fragment 1-C.

18 Q. Would you point that out on the chart, please.

19 A. Right here.

20 Q. And so this fragment was actually found very close
21 to Ms. Rigby?

22 A. Yes.

23 Q. I want to hand you State's Exhibit 93 and ask you
24 what that is, please?

25 A. State's Exhibit 93 corresponds to crime laboratory
26 case number 30, and this is a cartridge on this sketch that
27 corresponds with 1-A or an unfired round.

28 Q. And you collected both of these?

29 A. Yes, I certainly did.

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1 BY MR. HILL: We would ask that these also be
2 marked, received into evidence, State's Exhibit 85 and
3 93.

4 BY MR. CARTER: No objection.

5 BY THE COURT: Let them be admitted.

6 (BULLET FRAGMENT NEAR CARMEN RIGBY PREVIOUSLY
7 MARKED AS STATE'S EXHIBIT S-85 AND LIVE CARTRIDGE LABELED
8 A-1 PREVIOUSLY MARKED AS STATE'S EXHIBIT S-93, BOTH FOR
9 IDENTIFICATION ONLY, WERE NOW BOTH RECEIVED IN EVIDENCE.)

10 BY MR. HILL:

11 Q. Okay, there is-- I'm going to point to the middle
12 of this chart, State's Exhibit 39A, point to the middle of
13 that. Tell us what that represents, Ms. Schoene, please.

14 A. Did you want this admitted? Fragment 2-C?

15 Q. Yes, I do. I think I just overlooked that. We
16 will get to it in a minute.

17 A. Okay.

18 Q. Let's talk--

19 A. --Certainly. Here in the middle of the store,
20 again what you are looking at is the half, the top half of
21 the store. This is the counter. This is the counter that
22 was located in the center of the store where people would go
23 pay.

24 Q. Okay, and what did you say that was in the middle
25 of the counter?

26 A. Well, this is actually floor. It's a two leveled
27 counter. And what you see here in the middle is the floor,
28 and this is where people can walk in and conduct business.
29 This is the purse that had the identification belonging to

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1 Carmen Rigby.

2 Q. Was that purse on a table or a counter, or was
3 it -- it looks like it's in the center?

4 A. Yeah, I believe that it was on the floor.

5 Q. Did you take some photographs of that?
6 Specifically, let me refer you to State's Exhibit 28 for
7 identification.

8 A. Yes. This is the photograph that I took.

9 Q. What is it? A photograph of what?

10 A. This is a photograph of the open purse behind the
11 counter taken from the perspective, I was standing back
12 here. So if you would look at this photograph, you would
13 see this purse and then also the front of the store.

14 Q. Okay. Now again, we are talking about this center
15 aisle and where the, I call that the main desk for the point
16 of reference?

17 A. Main desk is good.

18 Q. Okay. I want to show you State's Exhibit number
19 29 and get you to look at that if you would. Tell us if you
20 recognize what is State's Exhibit 29?

21 A. State's Exhibit 29 is a color photograph of the
22 cash drawer that was behind the desk area. It's in the open
23 position. There is three paper slots in this cash drawer,
24 two of which are empty. One contains white paper.

25 Q. Okay, now when you say paper slots. Is that like
26 when you open a cash register drawer and there is currency,
27 places for different denominations?

28 A. Yes. These are the size of U.S. currency paper,
29 and there is three slots.

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1 Q. All right. Now I'm going to hand you State's
2 Exhibit 28 back, and with regard, would you look at State's
3 Exhibit 28 and the cash drawer, and would you just generally
4 indicate on the diagram where that cash drawer is located?

5 A. The cash drawer is located approximately here.

6 Q. And that would be on the inside; is that right?

7 A. On the inside, yes. It's not actually -- there is
8 not a cash register per se. It's actually more of a cash
9 drawer. It's a drawer that contained cash, but on the top
10 of it there wasn't buttons. It was just the drawer.

11 Q. All right, now let me refer back to State's
12 Exhibit 29 again. You indicated that the first two slots
13 are empty?

14 A. Yes.

15 Q. And the third one has a white paper. Was there
16 any paper money, any currency in the cash drawer?

17 A. There was no paper currency in the drawer. There
18 were several coins in the drawer, but there was no paper
19 currency.

20 BY MR. HILL: Your Honor, we ask that State's
21 Exhibit 28 and 29 be received.

22 (Pause while Defense Counsel looks at the
23 photographs.)

24 BY MR. CARTER: No objection.

25 BY THE COURT: Let them be admitted.

26 (SMALL PHOTOGRAPHS PREVIOUSLY MARKED AS STATE'S
27 EXHIBITS S-28 AND S-29 FOR IDENTIFICATION WERE NOW RECEIVED
28 IN EVIDENCE.)
29

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1 BY MR. HILL:

2 Q. Ms. Schoene, I believe for your convenience, I'm
3 going to let you get back on the stand for just a few
4 minutes. We have got a few more questions.

5 A. (Witness resumes witness stand.)

6 BY MR. HILL: Your Honor, I have an enlargement of
7 State's Exhibit 29, just a blowup. I would ask that it
8 be received.

9 BY MR. CARTER: No objection.

10 BY THE COURT: Let it be admitted.

11 (ENLARGEMENT OF PHOTOGRAPH OF CASH DRAWER
12 PREVIOUSLY MARKED AS STATE'S EXHIBIT S-29A FOR
13 IDENTIFICATION WAS NOW RECEIVED IN EVIDENCE.)

14 BY MR. HILL:

15 Q. Ms. Schoene, I'm just going to refer you once
16 again to State's Exhibit 29A, an enlargement of the cash
17 drawer. That is a photograph that is good enough almost
18 that you can count the change in the coin slots almost,
19 isn't it?

20 A. (Witness nods her head.)

21 Q. Okay, thank you, ma'am.

22 A. This-- okay.

23 Q. Go ahead.

24 A. I was just going to say this is the cash drawer.
25 These are the two slots that I referred to that were empty,
26 and this one just contained white paper.

27 Q. Next I have 28A, Ms. Schoene. I draw your
28 attention to this, please. This is an enlargement of the
29 inside area. I think we decided to call it the main desk.

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1 Is that the purse that you labeled in your drawing over
2 here?

3 A. Yes, this is the purse on the floor. It contained
4 identification for Carmen Rigby. The cash drawer is located
5 here. This is the cash drawer. And again, this is from the
6 back of the store toward the front of the store.

7 Q. And you gestured that that is the front door?

8 A. Yes, that is the main entrance.

9 Q. Thank you, ma'am.

10 BY MR. HILL: Your Honor, we ask that 28A be
11 marked for evidence.

12 BY MR. CARTER: No objection.

13 BY THE COURT: Let it be admitted.

14 (BLOWUP OF PHOTOGRAPH PREVIOUSLY MARKED AS STATE'S
15 EXHIBIT S-28A FOR IDENTIFICATION WAS NOW RECEIVED IN
16 EVIDENCE.)

17 BY MR. HILL:

18 Q. Ms. Schoene, how long were you -- just generally
19 speaking, was this a ten minute job for you to diagram,
20 photograph and collect evidence, or about how long did this
21 take you? I am being somewhat facetious. It's not a ten
22 minute job. Tell us about how long that that took you, that
23 you and your team worked there on the premises?

24 A. I arrived on the scene at 1:15. I began
25 documentation at 1:30, and then I left this crime scene at 6
26 o'clock that evening.

27 Q. In addition to working this, were you also asked
28 to process an automobile?

29 A. Not process the automobile per se, but to examine

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1 a particular area of the automobile.

2 Q. Okay. I have some photographs I want to show you.
3 I want to show you these photographs right here. These are
4 the photographs that have been marked State's 99, State's
5 99, 100 and 101.

6 A. Okay.

7 Q. And I would ask if you would just look at that and
8 if you could tell us I think kind of just in general terms
9 what those photographs are, and refer to them by number if
10 you would, please.

11 A. Yes, sir. Both Polaroid photographs which are in
12 State's Exhibit 99 and 100 depict the older model brown
13 vehicle that I was asked to look at. And State's Exhibit
14 101 depicts the glove box of this vehicle.

15 Q. Okay. Who asked you -- do you recall who it was
16 that asked you to take a look at the car, or who you talked
17 to about your examination of that car?

18 A. Investigator Wayne Miller is who initiated the
19 request.

20 Q. Okay, he was with what agency?

21 A. Mississippi Highway Patrol Criminal Investigations
22 Bureau.

23 Q. Okay, did at his request you take a look at that
24 car?

25 A. Yes, sir. He had asked that as soon as I finished
26 at the furniture store, if I could come to this vehicle and
27 process the area around the glove box for latent prints.

28 Q. So you, part of your expertise as a crime scene
29 investigator and crime scene specialist, is knowing how to

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1 take latent prints off of objects?

2 A. Yes.

3 Q. And that's what they were kind of asking you to
4 do?

5 A. Yes. He actually requested -- may I read my
6 notes--

7 Q. Yes.

8 A. --from what he requested? My notes reflect that
9 Wayne Miller requested that uh, that there was a vehicle
10 that, from which there might have been something stolen from
11 the glove box. The windows were down. The individual came
12 back out to the car and found the glove box ajar.
13 Investigator Miller requests us to process the glove box for
14 prints, for fingerprints when we finish here.

15 Q. Now what kind of car was that?

16 A. An older model brown Pontiac.

17 Q. And this particular car, I take it that you had a
18 chance to observe the car as you were walking up to it, the
19 paint job on it and all of that? Did you make any
20 description or take any notes about the condition of the
21 exterior of the car?

22 A. Yes. I arrived at the Winona Police Department at
23 6:04 to dust that portion of the vehicle. The vehicle was
24 sitting outside under a tree. The windows were rolled up.
25 It had been raining that day. The exterior of the car was
26 wet from the rain. I set out to dust the dry areas around
27 the passenger door and the glove box, the latch around the
28 glove box and the console.

29 Q. Okay. So you were going to work the interior?

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1 A. A portion of the interior.

2 Q. A portion of the interior. The car was outdoors,
3 and it had been raining.

4 A. Yes.

5 Q. Were you present working the scene when it was
6 raining?

7 A. I was inside for the majority of the time. I
8 really don't know if it rained. I just know the exterior of
9 the car was wet.

10 Q. The car was wet, okay. And what about the paint
11 job on that car? Did you make any notes as to what the
12 condition -- was it two toned--

13 A. No, it was not two-toned. It was a brown vehicle,
14 just an older model, but it was brown.

15 Q. Do you recall what -- did you take in your notes
16 what make and model the car was?

17 A. Older model brown, white Pontiac-- I mean, excuse
18 me, older model brown Pontiac.

19 Q. And I don't guess you knew whose car it was, did
20 you?

21 A. No, sir.

22 Q. And were you able -- I guess I need to ask this.
23 Were you able to lift any latent prints?

24 A. I did dust the vehicle for latent prints, but I
25 believe that I recovered one lift card. However, the
26 surface, the surface of the interior of the vehicle was
27 somewhat old and dusty, and the vinyl was sort of a rough
28 surface. So it would have been very difficult to -- the
29 best place to get prints in that situation would have been

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1 the exterior, which is very shiny and hard and glossy. But
2 I collected what I could off of the door, the latch.

3 Q. Now why did you mention the surface, the type of
4 surface? What difference does it make what kind of surface
5 it is?

6 A. Well, we all leave fingerprints on things that we
7 touch. Some of the receiving surfaces are more appropriate
8 to recover a latent print or fingerprint than others. For
9 example, if the surface is clean, if it's hard, if it's
10 non-porous like glass or plastic, those types of surfaces
11 are the most conducive to receiving fingerprints and
12 retaining fingerprints.

13 Q. And on this particular glove box, what kind of
14 surface was that?

15 A. The surface of this glove box was rigid and
16 somewhat textured. And it was an older model vehicle, so
17 portions of it were cracked, and it was also fairly dusty.
18 And it is almost impossible to collect a fingerprint off of
19 a dusty surface because when your fingers come in contact
20 with that dusty surface, what you end up doing, instead of
21 depositing your fingerprint, you pull off the dust. You
22 might notice that in the pollen season when you go outside
23 and perhaps touch your car, or you might touch some other
24 dusty surface. And this was a dusty surface, yeah.

25 Q. So that was not a good surface to try to get any
26 prints?

27 A. No, but I like to be optimistic, so I did try, but
28 I was not able to recover. I believe I might have recovered
29 a partial print, but the results were not good.

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1 Q. I want to show you also State's Exhibit number 38.
2 I failed to show you this while ago when you were talking
3 about working in the store. Tell us what that is if you
4 know, please.

5 A. This is State's Exhibit 38, and it is a color
6 photograph of the safe which was in Bertha Tardy's office at
7 the back of the furniture store. And the position of the
8 door on the safe is closed. It's not locked, but it is
9 closed.

10 Q. And how do you know that it wasn't locked?

11 A. Because I could open it.

12 Q. Did you do that?

13 A. Yes.

14 Q. Open it?

15 BY MR. HILL: I offer State's 38.

16 BY MR. CARTER: No objection.

17 BY THE COURT: Let it be admitted.

18 (PHOTOGRAPH PREVIOUSLY MARKED AS STATE'S EXHIBIT
19 S-38 FOR IDENTIFICATION WAS NOW RECEIVED IN EVIDENCE.)

20 BY MR. HILL: May I confer just one minute, Your
21 Honor?

22 (State's Counsel confer.)

23 BY MR. HILL:

24 Q. Ms. Schoene, I'm just going to ask if you would,
25 you have already testified about State's 46 and 47, the
26 black and white photography that you did to show the
27 footwear impressions. And this is State's 45A and 46A, an
28 enlargement of those. Can you tell us simply what is back
29 in this area back here, the back?

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1 A. That is the office of Bertha Tardy. That's where
2 the safe was located.

3 Q. And that's the safe that you just identified in
4 State's 38, I believe it was?

5 A. Yes. This photograph was taken of the footwear
6 impressions after the victims' bodies had been removed.

7 BY MR. HILL: Your Honor, we ask that State's 45A
8 and 46A be received.

9 BY MR. CARTER: No objection.

10 BY THE COURT: Let them be admitted.

11 (ENLARGEMENTS OF FOOTWEAR IMPRESSIONS PREVIOUSLY
12 MARKED AS STATE'S EXHIBITS S-45A AND S-46A FOR
13 IDENTIFICATION WERE NOW RECEIVED IN EVIDENCE.)

14 BY THE COURT: Your Honor, I ask that 99, 100 and
15 101, these are photographs of the car and the
16 photographs of the glove box; ask that they be--

17 BY MR. CARTER: Let me see those.

18 (Pause while Defense Counsel views photographs.)

19 BY MR. CARTER: No objection.

20 BY THE COURT: Let them be admitted.

21 (PHOTOGRAPHS PREVIOUSLY MARKED AS STATE'S EXHIBITS
22 S-99, S-100 AND S-101 FOR IDENTIFICATION WERE NOW RECEIVED
23 IN EVIDENCE.)

24 BY MR. HILL:

25 Q. Ms. Schoene, you just testified about State's
26 Exhibit 99, 100 and 101.

27 A. Yes.

28 Q. This is 99A, 100A and 101A, the blowups of the
29 car?

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1 A. Uh-hum.

2 Q. Now do you see this open glove box right there?
3 Did you notice on the lid there a couple of small
4 imperfections on the lid of the glove box above the key way?

5 A. Yes. This picture depicts the state -- is that
6 okay? The state and the condition of the glove box when I
7 arrived to process this area for prints. This is where I,
8 this was where I made the lift from this vehicle. The lip
9 here of the glove box appeared to have been pried open with
10 some small cylindrical object. I'm not sure, but it does
11 appear to have been pried in that some way.

12 Q. And why did you, how did you reach that
13 conclusion, ma'am?

14 A. You can see the impression marks there, and it was
15 ajar.

16 Q. Now also this car -- this is a picture of the car
17 that you dusted, and you said that it was noted that the
18 windows were down when the officers told you, that they
19 reported the windows on the car were down?

20 A. Yes. When it was reported to them and reported
21 that I requested that I come process the car, they had said
22 that this car had been found and that the windows had been
23 down at the time. Whoever drove the car left the car window
24 down.

25 Q. Now you also said that this car was only a single
26 color. It was not a two tone car; is that correct?

27 A. Right. It was a brown Pontiac Phoenix LJ is the
28 model with the license plate that you see displayed here.

29 Q. Okay. And what, do you have an opinion about why

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1 that is -- there appears to be a dark stripe there on the
2 car?

3 A. Well, it is certainly one brown, but the way that
4 this picture is taken with, you know, the curve of a car,
5 with the sun being overheard, it appears, the reflection
6 makes it almost look like there is a white stripe or
7 something there. But no, it's a mono tone brown vehicle.

8 Q. Thank you, ma'am.

9 BY MR. HILL: We would ask that the photos shown
10 100A, 99A and 101A be received.

11 BY MR. CARTER: No objection.

12 BY THE COURT: Let them be admitted.

13 (ENLARGEMENTS OF PHOTOGRAPHS PREVIOUSLY MARKED AS
14 STATE'S EXHIBITS S-99A, S-100A, AND S-101A FOR
15 IDENTIFICATION WERE NOW ALL RECEIVED IN EVIDENCE.)

16 BY MR. HILL:

17 Q. Ms. Schoene, when you, when you scouted this crime
18 scene, did you look at any possible entryways? In other
19 words, I know you went through the front door, you told us.
20 Did Tardy Furniture have any other access ways into the
21 building?

22 A. Yes. There were other doors to the building, and
23 the main entryway appeared to be that front door that came
24 to this portion of the store. Now there was a door in the
25 back of the store, the more warehouse portion that I
26 photographed from the alley way behind the building, and I
27 also photographed that same door from the inside.

28 Q. Okay. Speaking of the inside, did that door
29 appear to be secure to you?

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1 A. It was most definitely. The back door -- the only
2 door that was operable was the front entryway. The back
3 door, which I am describing that I photographed from the
4 alley way, had a large wooden--

5 Q. Bar? Board?

6 A. Board, a large wooden board that latched the door
7 shut. You couldn't close it from, you could not -- you had
8 to close it and lock it from the inside.

9 Q. Okay. I show you State's Exhibit 6 for
10 identification. Is that a picture of what you were just
11 talking about?

12 A. This is clearly and accurately depicts the
13 interior of the back door for the Tardy Furniture store.
14 It's State's Exhibit S-6.

15 Q. And I show you State's Exhibit S-7 inside the side
16 door. Do you recognize that photograph?

17 A. That is the other door. That is from the inside,
18 the side door.

19 BY MR. HILL: I ask that these be received. That
20 is State's 6 and 7.

21 BY MR. CARTER: No objection.

22 BY THE COURT: Let them be admitted.

23 (PHOTOGRAPHS PREVIOUSLY MARKED AS STATE'S EXHIBITS
24 S-6 AND S-7 FOR IDENTIFICATION WERE NOW RECEIVED IN
25 EVIDENCE.)

26 BY MR. HILL:

27 Q. Now these are the last photographs, Ms. Schoene.
28 I want you to, if you will, just look at these. You have
29 mentioned that you photographed the exterior of the

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1 building; is that right?

2 A. Yes, sir.

3 Q. The back, which would I guess be the alley behind
4 the building?

5 A. Uh-hum.

6 Q. I want to show you State's Exhibit 8 and 9 for
7 identification. Would you look at those and tell us if you
8 recognize them, please?

9 A. Yes. State's Exhibit 8 are 9 are both photographs
10 that I took of the alley way or the exterior of Tardy
11 Furniture. This is the back door from the outside.

12 BY MR. HILL: I would ask that they be received as
13 well, Your Honor.

14 BY MR. CARTER: Could I look at them?

15 BY MR. HILL: Yes.

16 (Pause while Defense Counsel looks at exhibits.)

17 BY MR. HILL: We offer S-8 and 9.

18 BY THE COURT: With no objection, let them be
19 admitted.

20 BY MR. CARTER: No objection.

21 BY MR. HILL: And Your Honor, we may can-- if
22 Counsel has no objection, we would offer 31, 32, 33 and
23 State's Exhibit 27.

24 BY MR. CARTER: No objection.

25 BY THE COURT: Let them be admitted.

26 (SMALL PHOTOGRAPHS PREVIOUSLY MARKED AS STATE'S
27 EXHIBITS S-8, S-9, S-27, S-31, S-32, AND S-33 FOR
28 IDENTIFICATION WERE NOW ALL RECEIVED IN EVIDENCE.)

29 (Mr. Hill called Mr. Carter up to look at a photo

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board.)

BY MR. HILL: Your Honor, I am also going to offer into evidence at this time State's Exhibit 98A and 41 that the witness has already testified about as enlargements. I think Counsel has no objection.

BY MR. CARTER: No objection.

BY THE COURT: They will be admitted.

(PHOTOGRAPH ENLARGEMENTS PREVIOUSLY MARKED AS STATE'S EXHIBITS S-98A AND S-41B FOR IDENTIFICATION WERE NOW RECEIVED IN EVIDENCE.)

BY MR. HILL:

Q. Ms. Schoene, I wanted to show you State's Exhibit number 38A. This is the photograph that you talked to us about just a minute ago about the safe in the back office I believe; is that correct?

A. Yes. This is the safe that was closed in Ms. Tardy's office at the back of the store.

Q. And what is this?

A. This is her desk area. Her seat was pushed back as if maybe she had been doing paperwork. There are several various neatly stacked piles of paper of various sizes and sorts on top of her desk. The phone was on the hook. Her adding machine, I believe, was on. And that's a clear, a true and accurate representation of what I saw that day.

Q. Thank you, ma'am.

BY MR. HILL: This is 38A for identification. I ask that it be received.

BY MR. CARTER: No objection.

BY THE COURT: Let it be admitted.

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(BLOWUP PHOTOGRAPH MARKED PREVIOUSLY AS STATE'S

EXHIBIT S-38A FOR IDENTIFICATION WAS NOW RECEIVED IN
EVIDENCE.)

(State's Counsel confer.)

BY MR. HILL:

Q. Ms. Schoene, I have got one other picture I would
just like to ask you. I'm not sure that you will recognize
this or not. This is State's Exhibit 95, and would you just
look at that for a minute, and then I will ask you about it.

A. I do recognize this photograph. State's Exhibit
95 is a color photograph showing a defect to a pillar, a
brick pillar that was painted white. This was near
Ms. Bertha Tardy's body in the back of the store.

Q. Could you point this out to us on the -- I don't
know if you can or not.

A. I believe it was this pillar, but I'm not certain.
But what this shows is a defect as if something hard and
fast moving hit this wall, excuse me, this pillar.

Q. And what is this-- we will show, we will pass this
to the jury in a minute if the Court allows us, but what is
this object right beside there?

A. It's a mattress wrapped in plastic.

Q. And the defect, is there an object pointing to
that defect?

A. There is a wooden ruler that is pointing to the
defect.

Q. And you saw that that day when you were there?

A. Yes.

Q. This is State's Exhibit 95.

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1 BY MR. CARTER: Let me see it.

2 BY MR. HILL: We offer it.

3 BY MR. CARTER: No objection.

4 BY THE COURT: Let it be admitted.

5 (PHOTOGRAPH PREVIOUSLY MARKED AS STATE'S EXHIBIT
6 S-95 FOR IDENTIFICATION WAS NOW RECEIVED IN EVIDENCE.)

7 BY MR. HILL:

8 Q. Ms. Schoene, when you were processing this crime
9 scene, could you tell the ladies and gentlemen of the jury
10 at that time that was, I think you testified that was July
11 the 16th, 1996, and that you worked there until about 6
12 o'clock that day?

13 A. I was at the furniture store until approximately 6
14 o'clock that evening, yes.

15 Q. Had you had any report of autopsy results? Did
16 you have a complete autopsy report at that time before you
17 left?

18 A. No, sir. I did not know what type of projectiles
19 might be in the bodies that were removed at about 3 o'clock
20 that afternoon. I did not know the autopsy results at that
21 time, and we had communicated to the officers when we left
22 to please, that they should keep the scene secure until they
23 obtained the autopsy results.

24 Q. Okay. And so you were looking for any projectiles
25 that might have been in the store, but you didn't know
26 exactly how many you were looking for?

27 A. Right. Right. We had collected five casings, but
28 four projectiles or fragments, and I wasn't sure if there --
29 there perhaps could have been one more projectile still at

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1 the scene, or it could have been inside of a victim. And we
2 wouldn't know that until the autopsy results were completed.

3 Q. I take it that y'all did look around on the floors
4 and on the surfaces?

5 A. Yes, sir.

6 Q. Without finding a fifth projectile?

7 A. Right. Right.

8 BY MR. HILL: All right. Your Honor, I need just
9 one more minute if I may. I think I am about to wrap
10 this up.

11 (AN ENLARGEMENT OF A PHOTOGRAPH MARKED AS STATE'S
12 EXHIBIT S-95 WAS MARKED AS STATE'S EXHIBIT S-95B FOR
13 IDENTIFICATION.)

14 BY MR. HILL:

15 Q. Ms. Schoene, I want to show you what has been
16 marked State's 95 B. This is an enlargement of the
17 photograph that you just testified about.

18 A. Uh-huh.

19 Q. All I would ask you to do, please, is just to
20 point out the defect or the nick on the brick column that
21 you were talking about so that everybody can see it.

22 A. Now this is a nick on the brick column. I don't
23 know what caused this nick, but what I can tell you from
24 observing it and what it looked like at the scene was that
25 something did hit this wall which, excuse me, the pillar
26 which caused the paint to be removed there.

27 BY MR. HILL: This is 95B, an enlargement of 95,
28 Your Honor. I ask that it be admitted.

29 BY MR. CARTER: No objection.

Melissa Schoene - DIRECT

1 BY THE COURT: Let it be admitted.

2 (ENLARGEMENT PHOTO PREVIOUSLY MARKED AS STATE'S
3 EXHIBIT S-95B FOR IDENTIFICATION WAS NOW RECEIVED IN
4 EVIDENCE.)

5 BY MR. HILL: Your Honor, I failed to offer
6 State's Exhibit 40. This is the, I guess you would
7 call it a legend for the diagram that the witness
8 testified to while ago, and I simply failed to offer
9 it. I would do so now.

10 BY MR. CARTER: No objection.

11 BY THE COURT: Let it be admitted.

12 (KEY FOR SKETCH PREVIOUSLY MARKED AS STATE'S
13 EXHIBIT S-40 FOR IDENTIFICATION WAS NOW RECEIVED IN
14 EVIDENCE.)

15 BY MR. HILL: Court indulge me one minute, Your
16 Honor. I am trying to make sure before I sit down that
17 I don't leave anything undone.

18 BY THE BAILIFF: Your Honor, the juror needs a
19 break.

20 BY THE COURT: We will take a short break.

21 (Off the record briefly until the juror returned
22 to the courtroom.)

23 BY THE COURT: All right, Mr. Hill. You ready.

24 BY MR. HILL:

25 Q. Ms. Schoene, all of this evidence that you have
26 testified about, the casings that you recovered, the
27 projectiles, the fragments, the live rounds, all of that
28 stuff you carried back to the crime lab. Did you transport
29 it?

Melissa Schoene - DIRECT - CROSS

1 A. Yes, I carried it back with me that evening and
2 submitted it into evidence at 8:15 that night.

3 Q. Okay. Are you the one that put it in these little
4 boxes and sealed it up and everything?

5 A. Yes.

6 BY MR. HILL: Okay. I think that's it, Your
7 Honor. Tender the witness for cross.

8 CROSS-EXAMINATION BY MR. CARTER:

9 Q. Okay, now with respect to this car, it certainly
10 looks like it is two colors to me, and I could be wrong. So
11 you are telling me--

12 A. -- It's one color. It's one; it's brown.

13 Q. That the shade or whatever is perfectly making it
14 appear that there is a darker color underneath there?

15 A. That the shade is making it appear as such?

16 Q. Well, maybe not the shade, but what is it that is
17 making it appear perfectly darker underneath here from
18 here--

19 A. Yeah, as I said, the sun up is here, and the
20 surface is curved, right? So what you see here is actually
21 a reflection, and this is actually in the shade. So the
22 true color is probably-- this is a flat portion. You know,
23 the back part of a car is flat; it is not curved. This is
24 probably the best representation of the color of the car.

25 Q. Do you have any other pictures that shows the
26 brown color without the reflection? Did you take this
27 picture?

28 A. Without seeing the small picture, I don't know if
29 I did take that picture or not. The pictures that I took on

Melissa Schoene - CROSS

1 the back have the Mississippi Crime Laboratory case number,
2 exhibit number and my initials. And since those are
3 enlargements, I don't know if those actually came from my
4 photographs or somebody else's. But that is the vehicle.
5 That is the tag number, and that is the same vehicle that I
6 processed, and that's the glove box.

7 Q. Okay, thank you. Were you able to tell what
8 direction those footprints were going? Were they going
9 outside or inside the store?

10 A. Was I able to tell which direction?

11 Q. Right. The so-called bloody footprints were, what
12 direction the person who made those footprints was going.
13 Were they going inside the store or outside the store?

14 A. They were made inside the store.

15 Q. Right. But based on, I guess the ridges, the
16 characteristics, can you tell whether the person who made
17 them had come from outside the store inside the store, or
18 was leaving inside the store going outside the store?

19 A. I would imagine they came inside the store and
20 then left the store.

21 Q. Okay. The three bloody footprints, you found
22 three; is that correct?

23 A. I found three partial footwear impressions; yes,
24 sir. That's correct.

25 Q. Okay, and of those three partial footprints, are
26 you able to tell -- and I'm trying to be as clear as I can,
27 and if I'm not being clear, it's because I am not able to --
28 can you tell what direction the person who left them were
29 heading?

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1 A. After they left the impression, which direction
2 they were going?

3 Q. Right.

4 A. I cannot make that determination without having
5 the shoe. The footwear impression examiner, the person who
6 examined this, could give you that information, but I can't
7 because I didn't perform those examinations.

8 Q. Thank you. Did you look for fingerprints on the
9 front door?

10 A. Which front door? Oh, to the store?

11 Q. Yes.

12 A. I did not dust the business door for fingerprints,
13 no.

14 Q. And why not?

15 A. Well, that is a high traffic area. The
16 fingerprints, let's see. That area -- so many people touch
17 the entrance of a business similar to the doors that you see
18 here that people coming in and out and the door here, so
19 many people touch it that there is a high likelihood that
20 any finger-- that any impressions, the finger impressions
21 that are there or fingerprints that are there are
22 obliterated due to the presence of so many other
23 fingerprints.

24 Q. So is it customary to just rule out checking the
25 front door, that you just on instincts or training decided
26 not to?

27 A. For high traffic areas such as that, it is
28 customary not to.

29 Q. Okay. You didn't do any tests to determine

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1 whether the footprints were, in fact, made by blood, did
2 you? Did you personally do it? Is that something you do?

3 A. Is what something I do? Test footwear
4 impressions?

5 Q. Yeah, to see if-- you said you believed earlier, I
6 believe, that the footprints were left; that substance is
7 blood?

8 A. Yeah, I suspected it to be blood. It was a very
9 close proximity to two large pooling areas of blood, but I
10 do not know if that is, in fact, blood.

11 Q. Okay.

12 A. If I may offer one of the reasons that I did not
13 collect any of that blood for testing is that it would
14 obliterate -- as an investigator, crime scene analyst, I had
15 a fairly good idea based on what was at the scene that that
16 was indeed blood that the partial footwear impressions were
17 in. But by testing it, by taking a sample, I would have
18 obliterated those footwear impressions.

19 Q. Were all three footwear impressions of the nature
20 that they would be of some kind of value to you? Were you
21 able to get some use from all three?

22 A. Well, at the crime scene, again my task was to
23 document and collect the physical evidence that was there.
24 At the crime scene the value -- the value of those
25 particular footwear impressions or partial footwear
26 impressions are determined by the examiner at the time that
27 the evidence gets back to the crime laboratory in a much
28 more controlled environment where they could be enhanced.

29 Q. Did you ever try to get fingerprints from the

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1 safe?

2 A. I did. The surface of the safe, we discussed good
3 surfaces for fingerprints. The surface of the safe was
4 fairly rough, almost like sandpaper but not quite that
5 course. I did dust the safe and the area around it and did
6 not recover any latent prints.

7 Q. Okay, you said earlier that the safe was unlocked.

8 A. Yes. Well, the door was actually closed, but it
9 wasn't shut all the way, and it wasn't locked.

10 Q. And you have no idea who unlocked it, do you?

11 A. I had have no idea that it was ever even locked.

12 Q. Okay, thank you. Now did you make a list of
13 everyone who came in and out of the crime scene?

14 A. I have a list of investigators that were there
15 while I was there, yes.

16 Q. Okay. Did you receive a list from anyone of who
17 was there before you got there?

18 A. I'm not sure what you mean.

19 Q. Did anyone make a list of what persons had entered
20 the crime scene and exited the crime scene before you got
21 there and actually passed it on to you?

22 A. I believe I was the third person inside the crime
23 scene, if that's what -- Chief Hargrove was there. The
24 gentleman who discovered the bodies was there. Actually,
25 I'm incorrect about that, and also the EMT's were there.
26 And I know this because of those partial footwear
27 impressions. At the time we didn't know who those partial
28 footwear impressions belonged to. The first person on the
29 scene, Chief Hargrove, indicated that they were there when

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1 he arrived. But however, I'm not one to just take
2 somebody's word for that. I want to make sure that I have
3 firsthand knowledge of everybody that was wearing shoes that
4 was there before me.

5 So as a result of that, I requested that the EMT's
6 that were on scene before I arrived return so I could look
7 at the tread pattern on their shoes. And if they were even
8 remotely similar, then I would have collected the EMT's
9 shoes into evidence. I have done that before at crime
10 scenes. It's not a popular move, but it is necessary to
11 include or exclude the EMT footwear, their footwear. I also
12 requested that the gentleman that discovered the bodies
13 return to the scene, and I drew rough sketches of his
14 footwear impressions as well in my notes, in my notes, and
15 his footwear impressions were horizontal bars. And what you
16 see here is somewhat of a, like an enlarged "M" or a Chevron
17 pattern.

18 Q. So did you check the police officers' soles of
19 their shoes also?

20 A. I had checked, yes, sir. I had checked Chief
21 Johnny Hargrove, and to my knowledge, that is all that had
22 been in to the crime scene before I arrived.

23 Q. Now did you seek to get latent prints from the
24 window of Doyle Simpson's car?

25 A. The window was rolled-- it was reported to me that
26 the window was rolled down at the time that it was accessed.
27 So no, I did not.

28 Q. Did you attempt to get some from the counter
29 inside Tardy's where the cash box was?

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1 A. Yes. Yes, I did. I dusted that entire surface
2 for latent prints. When I say dust for latent prints, you
3 may have seen this procedure done on television where we
4 take a brush, a long fiberglass brush and dust it in black
5 powder and quite literally just dust the surface. And any
6 recent latent prints, and I say recent because it has to be
7 a fairly moist, somewhat left behind. At any rate I dusted
8 the entire surface. The surface of that counter was not
9 highly polished. It was fairly scratched. It was a white
10 surface, and I did recover, collect some latent prints from
11 that area.

12 Q. Okay. And you just collect; you don't analyze or
13 do anything at the crime lab with them after that?

14 A. I do examine evidence at the crime lab, but my job
15 at that point was as a crime scene analyst, just simply just
16 to collect the evidence and get it back to a more controlled
17 environment inside the crime laboratory.

18 Q. Now when you went to -- you found Doyle Simpson's
19 car, and by the way, where did you find this car?

20 A. It was at the Winona Police Department under a
21 tree.

22 Q. And you checked the passenger door area, I believe
23 you said; is that correct?

24 A. Yes, the passenger door area. It was reported
25 that -- well, that's what I was asked to examine from the
26 investigator.

27 Q. Isn't the passenger door area a pretty common area
28 where you would find a multitude of different prints?

29 A. If the exterior of car was dry, yes, sir; it

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1 probably would have been possible. But the exterior, as I
2 mentioned, was wet. It had rained, and so the rain will
3 likely obliterate any viable prints that were there. The
4 interior of the car, we did do -- the interior of this older
5 model Pontiac was -- it was cloth seats. So we can't dust
6 for prints if there is cloth seats. Also, I had mentioned
7 the dust, the dust issue. That was the majority -- that was
8 my major hurdle as far as dusting for prints in that vehicle
9 was that dusty console, and also the cracked, rather
10 textured surface of that glove box.

11 Q. Okay, now the passenger door area; I assume you
12 are talking about -- I could be wrong; correct me. You are
13 talking about like the door handle area where you open the
14 door to get in, or are you talking about some other area?

15 A. In regard to what?

16 Q. With respect to Doyle Simpson's car.

17 A. Okay.

18 Q. Did you actually dust near the area where the door
19 handle is, where you open the door?

20 A. On the outside?

21 Q. On the outside; right.

22 A. Yeah, it had been raining, and so I can't. I
23 can't dust the car if it has been raining. It would have
24 washed away the fingerprints.

25 Q. I'm sorry. I understand.

26 A. Oh, that's okay. And then the interior, I did
27 attempt to get some prints from the interior but was not
28 very successful, in my opinion, based on the surface.

29 Q. Now with respect to that wall or what did you call

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1 it? A column inside Tardy's.

2 A. Yeah, the defect?

3 Q. Right. Now you are not telling us you have any
4 idea when that defect was made, are you?

5 A. No, sir. That could have been there for a few
6 years. I don't have any knowledge of when that occurred,
7 and I really don't have a test that I can perform to
8 determine what caused it.

9 Q. Now I just want to make sure I am sure of
10 something. Are you saying that there were three doors to
11 Tardy's Furniture store? There was a front door, a back
12 door and a side door?

13 A. And a side door, yes.

14 Q. That picture that showed the defect to that
15 column, did you take that picture?

16 A. I really again would have to look at the original
17 to make that decision. It does truly and accurately depict
18 the column that was there, but as to whether or not I took
19 that, I truly don't know. There was also other
20 investigators taking photographs after we removed the
21 bodies. So it could have been any number of the
22 investigators.

23 Q. Now did you look for fingerprints also on the cash
24 drawer? Was it the type of surface that you could possibly
25 lift prints?

26 A. Unfortunately not. The cash drawer was painted
27 gray and somewhat worn. And wood is a very porous surface,
28 and the worn wood -- highly polished wood is a good
29 receiving surface for fingerprints. You might think about

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1 your dining room table, that if you clean that and you put
2 your hands on there, you get great fingerprints. But if you
3 might think of an old door, an old wooden door that does not
4 have a polished surface, you really won't leave fingerprints
5 there. And unfortunately, that was the surface; that was
6 the way that the drawer was constructed. It was wooden, and
7 it was fairly worn as well.

8 Q. Okay, are you familiar with Dr. Henry Lee?

9 A. Yes. I have a book signed by him. Yes.

10 Q. You have a book signed by him?

11 A. I certainly do.

12 Q. Have you taken classes that he taught?

13 A. I believe that I have attended a workshop where he
14 spoke.

15 Q. Okay, tell the jury who he is.

16 A. He is a criminalist.

17 Q. One of the renowned and foremost one in the
18 country; is that correct?

19 A. If you follow pop culture, yes.

20 Q. If you follow pop culture?

21 A. Uh-huh.

22 Q. Well, you lost me. What does that mean?

23 A. What does pop culture mean?

24 Q. Yes.

25 A. Popular culture, watch a lot of TV.

26 Q. Oh, okay. I thought you were talking about the
27 music.

28 A. No. He might be that too; I don't know.

29 Q. Okay.

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1 A. He is a forensic scientist though, and he teaches
2 at a school in Connecticut.

3 Q. Now is it fair to say that documentation and
4 photographing of imprints or impressions must be done
5 properly and at an optimum or best capability?

6 A. Could you say that again? It sounds right. But I
7 don't want to agree unless I am sure.

8 Q. Okay, is it fair to say that documentation and
9 photographing--

10 A. Yes.

11 Q. -- of imprints or impressions must be done
12 properly and at optimum or best capability in order to be, I
13 guess the most accurate or reliable?

14 A. Do I agree with that statement?

15 Q. Yes.

16 A. To some extent. I have made positive
17 identifications on footwear impressions that weren't
18 collected under optimal conditions. It would be best, yes.
19 But I mean it is possible, it is possible to go, to
20 accurately perform a forensic investigation even if the
21 evidence that you have is not optimal.

22 Q. Okay. But you would say that it is critically
23 important to do so if you can, to document and photograph it
24 as perfectly as possible in order for it to have the best
25 and most reliable use?

26 A. Yes.

27 Q. Now let me ask you a few things about -- you took
28 the pictures. You took them in black and white?

29 A. I only took, the only impressions that I took in

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1 black and white were what are called examination quality
2 photographs. So the black and white photographs only
3 correspond to the suspected bloody partial footwear
4 impressions. The evidence, the general scene documentation
5 is done in color photography. And the reason that I mention
6 that we do use black and white photography in that instance
7 is because once it is enlarged, the greater contrast. If
8 you use black and white film, there is many more-- it is
9 kind of hard to fathom this, but there is many more shades
10 of gray between pure black and pure white that make
11 examination quality photography, well, to make the use of
12 black and white film necessary for examination quality
13 photography.

14 Q. Did you use a tripod?

15 A. I certainly did. I also used a scale which you
16 see in there and a detachable flash for oblique lighting
17 enhancement, the enhancing the footwear impressions using
18 different angles of oblique light.

19 Q. Did you set the camera up in a way so that the
20 film planing was parallel to the plane of the surface?

21 A. Yes. That's the only reason that we do use a
22 tripod. And the reason for that, if you can imagine, if you
23 have a flat surface, if you don't use a tripod to take
24 examination quality photographs, if you try to -- and you
25 see this on TV; it's not true. If people just stand over it
26 and click, what you are doing, once that is enlarged is what
27 you would create is a footwear impression that is severely
28 distorted. And what I mean by that, if you can picture, if
29 you are driving down the road, and you look way off down the

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1 road, it looks like the road gets smaller. Right? It
2 doesn't; it's just your perception. And that's what occurs
3 if you attempt to take examination quality photographs not
4 using a tripod.

5 Q. Did you take only three pictures, or did you take
6 more?

7 A. Of the footwear impressions?

8 Q. Yeah.

9 A. I took about two rolls of film of just those three
10 footwear impressions.

11 Q. Did you take them from several different angles?

12 A. No, I took --well, I took them from different
13 heights. Now again, angles is not something that's --
14 angles is not something that you can alter when you are
15 taking examination quality photographs. Remember, that's
16 the reason for the tripod. You don't want to take the
17 angle, the camera to different-- excuse me. You don't want
18 the plane of that film to be at a different angle than the
19 surface of the impression, or you will, once it is enlarged,
20 the impression will be distorted.

21 Q. Did you use any kind of chemical or enhancement
22 reagents?

23 A. I have used chemical enhancements in the past.
24 With footwear impressions and bloody footwear impressions
25 and fingerprints, the main chemical enhancement is amido
26 black. What that does is reacts with the protein in the
27 blood and makes that blood a lot darker. So chemical
28 enhancements would have been something that I most
29 definitely would have used if the surface was not black

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1 linoleum. Since this was already black linoleum, if I had
2 enhanced it, it would actually probably have decreased the
3 effectiveness of the evidence.

4 Q. In this case all you did was photographed them and
5 sent them to the crime lab? You didn't have any additional
6 responsibility with respect to that, did you?

7 A. With respect to the footwear impressions?

8 Q. Yes, ma'am.

9 A. No, sir. I am a certified footwear impression
10 examiner. I have had training, and I have also been court
11 qualified as a footwear impression examiner. I have
12 testified as a footwear impression examiner, but in this
13 case my role as far as regarding these footwear impressions
14 were only documentation and collection. Another examiner
15 performed the comparisons.

16 Q. Now did you tell me a few minutes ago you had a
17 list of persons you saw come in and out of the crime scene
18 area?

19 A. I have seen a list. I do not have a list in my
20 notes, but there should have been a list submitted in to --
21 there is a list.

22 Q. Okay. One moment. Did you do the diagram? Do
23 you recall whether you did the diagram of the sketches?

24 A. One of -- I supervised the diagram process, but I
25 did not actually do the diagram, draw the diagram.

26 Q. One moment. Now the damage to the glove box in
27 Mr. Simpson's car, you said it looked like pry marks?

28 A. It looked like to me to be pry marks; yes, sir.

29 Q. Now you don't have any idea when those were made,

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1 do you?

2 A. Absolutely no idea.

3 Q. And you don't have any idea who made them, do you?

4 A. No.

5 Q. So it very well could have -- those pry marks
6 could have been made prior to July the 16th?

7 A. I would ask the person that owned the car. I
8 don't know.

9 BY MR. CARTER: One moment.

10 (Defense Counsel confer.)

11 Q. Ms. Schoene, you testified earlier that you found
12 some casings, and I think you found a live round, at least
13 one?

14 A. Yeah, one live round, five casings, two
15 projectiles, and two fragments.

16 Q. With respect to the casings and the live round,
17 isn't it possible to find fingerprints on those in some
18 situations?

19 A. Yes, it is. Well, it is possible to find
20 fingerprints on those. Those were submitted to the crime
21 laboratory and requested that they be examined for
22 fingerprints.

23 Q. But you didn't examine them for fingerprints
24 yourself?

25 A. No, sir. Again, my role at this crime scene was
26 to document the evidence and collect the evidence.

27 Q. Would dusting them for fingerprints have done any
28 damage?

29 A. Dusting them, the optimal way to develop

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1 fingerprints on casings, hard metal surfaces like that is
2 probably to use super glue, cyanoacrylate fuming. That
3 would be the super glue fuming to raise the fingerprints on
4 casings. That's the way that I have done it in the past.
5 And that is a procedure that is done in the crime laboratory
6 under controlled conditions.

7 Q. Okay, so you don't do that ordinarily at the crime
8 scene?

9 A. They do it on CSI at the crime scene, but we
10 really don't. (Laughter.)

11 BY MR. CARTER: Okay.

12 BY THE COURT: Anything further, Mr. Hill?

13 BY MR. HILL: Just one question.

14 REDIRECT EXAMINATION BY MR. HILL:

15 Q. Ms. Schoene, do you happen to know the examiner
16 that did look at the footwear impressions that you took back
17 to the lab and developed?

18 A. I believe that was Joe Andrews.

19 Q. Was he a certified footwear--

20 A. -- Oh, he certainly is. He is very good, yes.

21 BY MR. HILL: Nothing further, Your Honor.

22 BY THE COURT: Is she finally excused?

23 BY MR. EVANS: Yes, sir.

24 BY THE COURT: Thank you, Mr. Schoene. You are
25 free to go.

26 BY THE WITNESS: I appreciate that.

27 WITNESS EXCUSED.

28 BY THE COURT: And ladies and gentlemen, you are
29 going to appreciate this. We are going to quit for the

Court recessed for night on 11/29/07
1 day. You are going to be housed at the Country Inn
2 Suites in Grenada. I have two night bailiffs. They
3 are my riding bailiffs that travel with me some, Marvin
4 Lawrence and Floyce Brock. And they have done all this
5 before, so they know how to take care of you, and they
6 will.

7 You cannot discuss this case amongst yourselves
8 nor can you discuss it with them at all, or anybody
9 else for that matter. Because of the nature of the
10 case, your phones will get you to the front desk, and
11 you will have some way to communicate with the
12 bailiffs, but you won't be able to call out. You are
13 not to -- well, for now you won't have any access to
14 any media.

15 I'm going to let you go to the jury room. I'm
16 going to let them get you organized. They have got
17 some vans, and they are going to take you. You are set
18 up for your meal tonight. We are going to start back
19 in the morning at 9 o'clock, and I will see you then.

20 You may take them to the jury room.

21 (COURT WAS RECESSED FOR THE NIGHT ON NOVEMBER 29,
22 2007.)
23
24
25
26
27
28
29

P-R-O-C-E-E-D-I-N-G-S

(TESTIMONY HEARD ON NOVEMBER 30, 2007.)

THE COURT: Who do you have first?

MR. EVANS: James Edward Kennedy.

THE COURT: Good morning.

(THE JURY WAS SEATED IN THE COURTROOM.)

(THE WITNESS ENTERED THE COURTROOM.)

THE COURT: Have a seat. Were you sworn yesterday?

THE WITNESS: Yes.

THE COURT: You can have a seat.

(THE WITNESS WAS SEATED ON THE WITNESS STAND.)

State your name, please, sir.

THE WITNESS: James Edward Kennedy.

MR. EVANS: May I proceed, Your Honor?

THE COURT: (Nodded.)

JAMES EDWARD KENNEDY, Called on behalf of the State, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. EVANS:

Q. How are you doing this morning, Mr. Kennedy?

A. Pretty good.

Q. Mr. Kennedy, do you have any nicknames that you go by?

A. Bo Jack.

Q. Okay. All right. Mr. Kennedy, you know why we are here in this trial; is that right?

A. Yes, sir.

Q. And do you remember the morning of the Tardy murders when the four people got killed?

1 A. Yes, sir.

2 Q. Where did you live at that time?

3 A. 635 South Applegate.

4 Q. 635 South Applegate?

5 A. Yes, sir.

6 Q. If you would, speak up just a little bit. I don't

7 think that microphone amplifies any.

8 A. Yeah. 635 South Applegate.

9 Q. Where is that located?

10 A. South of town here. Down passed Wal-Mart.

11 Q. Okay. Is it close to any business or any factory?

12 A. The tombstone place is right across from where I

13 live. Factory is back down below.

14 Q. All right. And what factory is that?

15 A. Angelica.

16 Q. How far do you live from Angelica?

17 A. I would say -- I don't know exactly how far it is

18 from my house to there.

19 Q. All right. Just, just an estimate. How would you

20 compare it to a football field?

21 A. About halfway.

22 Q. Okay. About half of a football field distance from

23 your house to Angelica.

24 A. Right.

25 Q. Do you know a person by the name of Curtis Flowers?

26 A. Yes, sir.

27 Q. Did you know him at that time?

28 A. Yes, sir.

29 Q. Did you see him that morning?

- 1 A. Yes, sir.
- 2 Q. Where did you see him?
- 3 A. Coming down the highway.
- 4 Q. What was he doing?
- 5 A. Walking.
- 6 Q. Which direction was he walking?
- 7 A. South.
- 8 Q. Where did he go?
- 9 A. He turned on Angelica.
- 10 Q. By your house.
- 11 A. Yes, sir.
- 12 Q. All right. What happened after he turned coming
- 13 down the road where you lived?
- 14 A. We spoke briefly.
- 15 Q. You spoke to him.
- 16 A. Right.
- 17 Q. And he spoke back.
- 18 A. Yes, sir.
- 19 Q. What time of morning was that?
- 20 A. 7:15.
- 21 Q. And how do you remember, or how were you able to
- 22 remember what time it was?
- 23 A. That's the time I leave taking my sister to work.
- 24 Q. What side of Highway 51 do you live on? Is it the
- 25 east side?
- 26 A. Yes, sir.
- 27 Q. How far away from Curtis Flowers were you when you
- 28 saw him walking in front of your house on the morning of the
- 29 murders at about 7:15?

1 A. I don't know exactly how far it was.

2 Q. All right. Give me an estimate in the courtroom.
3 What is about the same distance from you that he was?

4 A. About the distance from where I'm sitting to the
5 lady over there. (Indicated.)

6 Q. To which lady? This lady? (Indicated.)

7 A. That one. (Indicated.)

8 Q. Right here? (Indicated.)

9 A. Yes. Yes.

10 Q. So about the distance from me to you now, you saw
11 and talked to this defendant as he walked by your house at
12 7:15 on the morning of the murders.

13 A. We spoke briefly. Yes, sir.

14 Q. Which direction did he head after y'all talked?

15 A. East.

16 Q. Is that on down toward Angelica?

17 A. Yes, sir.

18 Q. Any question about who you saw and talked to that
19 morning?

20 A. No, sir.

21 MR. EVANS: Tender the witness, Your Honor.

22 CROSS-EXAMINATION BY MR. CARTER:

23 Q. What kind of clothes did Mr. Flowers have on that
24 day?

25 A. He had on gray and black sweater and white pants
26 that day.

27 Q. Long-sleeved pants? I mean --

28 A. Excuse me.

29 Q. -- long pants. Not short pants. Right?

1 A. That's right.

2 Q. Okay. Now, is that the first time you ever seen Mr.
3 Flowers walking?

4 A. Was it the first time I ever seen him --

5 Q. Ever seen him walking on the east side of town.

6 A. I don't know.

7 Q. Okay. You could have seen him walking at other
8 times as well.

9 A. Not down there. No.

10 Q. That's the first. So you don't know if you have
11 seen him walking on the east side before, but you are saying
12 you haven't seen him walk down 51 before. Is that what you
13 are saying?

14 A. No, I haven't seen him walk down 51.

15 Q. And you haven't seen him walking on Angelica before.

16 A. Nope.

17 Q. That's the only time.

18 A. That's the only time.

19 Q. Now, to cut out all the confusion, there is a plant
20 called Angelica, or there was a plant. It's not functioning
21 or running anymore; is that correct?

22 A. That's right.

23 Q. And there is a little road called Angelica that goes
24 all the way to Church Street; isn't that correct?

25 A. That's right.

26 Q. And before you get to Angelica, the plant, there are
27 several houses there; isn't that correct?

28 A. That's right.

29 Q. On the left side, how many houses are there?

1 A. You mean on the left side?

2 Q. Right.

3 A. It's four before you get to the plant.

4 Q. Four before you get to the plant on the left side.

5 A. Yes, sir.

6 Q. Are there any on the right side?

7 A. It's two on the right side.

8 Q. Okay. Now, once you saw Mr. Flowers turn on to
9 Angelica, how far on Angelica did you see Mr. Flowers go?

10 A. I just seen him turn and go down it. I was getting
11 ready to leave with my sister to go to work.

12 Q. Okay. So once you saw him turn, you have no idea
13 where he went after that; is that correct?

14 A. All I know he went that way.

15 Q. Right. So he could have visited any of those houses
16 and turned around for all you know; is that correct?

17 A. For what I know, I don't know.

18 Q. In other words, so to be clear, you don't know if he
19 went to Angelica or one of those six houses there you
20 described as being on Angelica before you get to the plant;
21 correct?

22 A. That's correct.

23 Q. Now, talking about factories back there, isn't
24 there, if you go on through Angelica and pass the plant
25 Angelica, and turn on Church, right or left, I believe there
26 is another plant back there. Isn't there a plant back there
27 on Church also?

28 A. To the right. Yes.

29 Q. Okay. Now, how many times have you talked to the --

1 you know John Johnson? Do you know John Johnson?

2 A. Yes, I know --

3 Q. He used to be the police chief and works for Mr.
4 Evans now. How many times did you talk to him?

5 A. Once or twice.

6 Q. Once or twice. And when did you give this statement
7 to the police?

8 A. I don't know.

9 Q. To Mr. Johnson?

10 A. I don't know exactly what date it was.

11 Q. Okay. Wasn't it two months, about two months after
12 the killings at Tardy?

13 A. I can't say that.

14 Q. Was a tape running when, when it was going on? Did
15 he tape your statement?

16 A. Yes, he taped it.

17 Q. He did.

18 A. Yes, he taped it.

19 Q. Okay. Can you dispute if I told you that I had
20 information that said the taped statement was on 17th -- I'm
21 sorry, September 17, 1996, can you dispute whether it happened
22 on that day or not?

23 A. I can't say for sure.

24 Q. Okay. So it could have been that day.

25 A. I don't know.

26 Q. Okay. Now, who was with Mr. Johnson, or was Mr.
27 Johnson alone when he talked to you?

28 A. Yes, he was alone.

29 Q. Okay. And I might have asked this before. I

1 apologize if I did. How many times you say you talked to him?
2 A. Once or twice.
3 Q. Okay. And, and whether it was once or twice, you
4 talked to just Mr. Johnson, not Mr. Johnson and somebody else;
5 is that correct?
6 A. Yeah.
7 Q. That's correct. Did you talk to Chief Johnny
8 Hargrove?
9 A. Once. Yeah.
10 Q. Was that a separate time than when you talked to Mr.
11 Johnson?
12 A. It was a separate time when I talked to the chief.
13 Yeah.
14 MR. CARTER: May I approach the witness, Your
15 Honor?
16 THE COURT: (Nodded.)
17 Q. (By Mr. Carter:) Can you look at this for a second
18 and tell me was that one of the times that you talked to Mr.
19 Johnson and, and maybe somebody else? Start at the top too.
20 A. I don't see a date.
21 Q. Do you see at the top where it says today's date is,
22 the first line?
23 A. Oh, okay. September 17 is what you saying.
24 Q. That is what the paper is saying; is that correct?
25 That is what you read on the paper; is that correct?
26 A. It could have been.
27 Q. So you could have talked to him on that date. Is
28 that what you are saying now?
29 A. It could have been. It is just like I say, I don't

1 know what date it was. I know I talked to him.

2 Q. But you do know that you didn't talk to John Johnson
3 and Chief Hargrove on the same day. Is that what you are
4 saying?

5 A. I talked to Hargrove first.

6 Q. How many times?

7 A. But not in there.

8 Q. How many times did you talk to Mr. Hargrove?

9 A. I don't know exactly.

10 Q. Was it more than once?

11 A. Could have been.

12 Q. Could it have been more than three times?

13 A. I doubt it.

14 Q. You doubt it. So it had to be two or three times.

15 Is that fair to say?

16 A. Maybe twice.

17 Q. Maybe twice. And let's see if we can take a, a good
18 guess at how many times you talked to Mr. Johnson. Was it
19 once, twice or more than twice?

20 MR. EVANS: Your Honor, I believe this witness
21 has answered that at least three times.

22 THE COURT: Sustained. He has asked and
23 answered that.

24 MR. CARTER: One moment.

25 Q. (By Mr. Carter:) Now, didn't you also tell Mr.
26 Johnson that Mr. Flowers had on a black sweater at some point?

27 A. I said gray and black. I didn't say just black.

28 Q. So, so you said from the beginning, right off the
29 bat, that when you saw Mr. Flowers he had on a black sweater.

1 A. Gray and black.

2 Q. Okay. So you never said that you believe he had on
3 a black sweater and white pants.

4 A. I said he had on a gray and black sweater and white
5 pants.

6 MR. CARTER: May I approach the witness again,
7 Your Honor?

8 THE COURT: (Nodded.)

9 MR. EVANS: Your Honor, I think we need to have
10 that document marked for identification.

11 THE COURT: Okay. Let's mark it for
12 identification, but then I think we need to identify it.

13 MR. EVANS: Yes, sir.

14 THE COURT: But I'm not sure. I'm not sure he
15 can identify it.

16 MR. EVANS: I don't think so.

17 MR. CARTER: We'll find out.

18 THE COURT: Can we -- can y'all agree as to
19 what it is?

20 MR. EVANS: If we are going to admit it, we
21 can.

22 THE COURT: No. No. No. That's a whole
23 different story.

24 MR. EVANS: Yes, sir.

25 THE COURT: But you are marking a document for
26 identification. That would mean somebody needs to
27 identify what it is. I think it is a transcript, isn't
28 it?

29 MR. EVANS: Yes, sir. My, my problem -- I

1 think for the record we have got to be clear in the
2 record what document he is talking about. I'm not
3 talking about identification for purposes of using it,
4 just for identification of what he is talking about.

5 THE COURT: Okay.

6 (A WRITTEN STATEMENT OF JAMES EDWARD KENNEDY WAS MARKED
7 DEFENDANT'S EXHIBIT NUMBER 1 FOR IDENTIFICATION.)

8 Q. (By Mr. Carter:) Now, Mr. Kennedy.

9 A. Yes, sir.

10 Q. I understand you may not remember the exact date or
11 dates that you talked to Mr. Johnson and that you talked to
12 Chief Hargrove, but you do know that you did talk to both at
13 some point. And I believe you told me earlier that a tape
14 was, was running; is that correct?

15 A. That's right.

16 Q. At least on one of those occasions. Did they tape
17 your conversation on every occasion that they talked to you?

18 A. I don't know.

19 Q. Okay. Can you look at this exhibit, starting from
20 the top, and tell me what it appears to be to you? In fact,
21 read the first four or five lines.

22 THE COURT: Well, he can't read from it because
23 it is not in evidence.

24 Q. Can you identify it? Look at it and tell me if you
25 can tell me what it is or not.

26 A. This says John Johnson and the chief.

27 Q. Does that document reflect a conversation had
28 between you and Chief Hargrove and Mr. Johnson?

29 A. I talked to them at one point together.

1 Q. I thought you said earlier that you didn't talk to
2 them together.

3 A. At one point I did.

4 Q. So now you are saying that you did talk to them
5 together; is that correct?

6 A. At one point, yes. That's been 11 years.

7 Q. I know how long it's been. And your testimony that
8 you never told John Johnson specifically that I believe he had
9 on a black sweater and white pants.

10 A. I keep telling you I told him a gray and black
11 sweater and white pants.

12 Q. I understand.

13 A. On that --

14 Q. Yes, sir. I understand you told him that also. But
15 what I'm asking you is did you also tell him initially that,
16 that Mr. Flowers had on a black sweater and white pants - yes
17 or no?

18 A. No.

19 Q. Okay. Thank you.

20 How long had you known Mr. Flowers? Pretty much all his
21 life?

22 A. I know his family.

23 Q. You know his family.

24 A. Yeah.

25 Q. And did you know him at all or you just --

26 A. Yeah, I knew him.

27 Q. Okay. You knew him when you saw him also as well.

28 A. That's right.

29 Q. Okay. Now, did Mr. Flowers stop and talk to you, or

1 did he talk as he was walking?

2 A. As he was walking, we spoke briefly.

3 Q. Okay. Now, that morning you had to take your sister
4 to work; is that correct?

5 A. That's right.

6 Q. And was that the only day that you took her to work?

7 A. I take her to work all the time.

8 Q. Take her to work all the time. Was there anything
9 about Mr. Flowers that particular day that made you pay
10 particular attention to him?

11 A. He was sort of in a hurry that morning.

12 Q. Okay. And that is not how he usually walks.

13 A. (Shook head.)

14 Q. So where else have you had an opportunity to observe
15 Mr. Flowers walking other than that day?

16 A. Downtown.

17 Q. Downtown.

18 A. Yeah.

19 Q. And his pace had always been slower than his pace
20 that day.

21 A. That's right.

22 Q. Do you remember what day of the week the killing
23 took place at Tardy's?

24 A. July 16.

25 Q. What day of the week was that - Monday, Tuesday,
26 Wednesday, Thursday?

27 A. I don't remember what day of the week.

28 Q. Now, this was July, yet you maintained it was a
29 sweater he had on; is that correct?

1 A. That's right.

2 Q. Now, when you talked to the police, did you initiate
3 this conversation? Did you go to the police, or did they come
4 to you?

5 A. I think I went to them.

6 Q. Okay. And what is it that prompted you to go to
7 them two months later?

8 A. Why you keep saying two months later?

9 Q. Well, my records indicate that the conversation
10 happened September 17, 1996. Do you have information that it
11 happened earlier?

12 MR. EVANS: Your Honor, I object. He has
13 already said he talked to them on numerous occasions.

14 THE COURT: Well, he is on cross-examination.
15 I will let him explain.

16 Q. (By Mr. Carter:) Can you tell me, can you tell the
17 jury, because I don't want to be confusing when, in fact, you
18 did talk to Mr. Hargrove and John Johnson? I don't know. I
19 have just one date. So can you tell us the other dates that
20 you did?

21 A. I don't have exact date.

22 Q. But you want to take a -- want to make
23 approximation.

24 A. No. I just know I talked to them.

25 Q. It wasn't -- you didn't talk to them a week after
26 the -- you didn't talk to them the day of the killing, did
27 you, at Tardy's?

28 A. No.

29 Q. Is it fair to say you didn't talk to them within a

1 week after the killings?

2 A. It was before then.

3 Q. You talked to them sooner than a week.

4 A. I talked to Hargrove sooner than a week.

5 Q. Do you have any idea the first time you talked to
6 Mr. Johnson?

7 A. Not exact date.

8 Q. One moment. Now, were you aware that a reward was
9 offered for information?

10 A. Nope.

11 Q. You were not aware of that.

12 A. Not at the time. No.

13 Q. When did you become aware?

14 A. I think they put it in the paper.

15 Q. Okay. You, you saw it in the paper.

16 A. I think they put it in the paper.

17 Q. At what point did you see it in the paper? Do you
18 know?

19 A. I can't correctly remember that.

20 Q. Did you see any posters around town, in stores or on
21 buildings offering a reward?

22 A. I think I seen a poster on one store.

23 Q. Okay. Haven't you admitted at some other point that
24 you didn't remember what month you saw Mr. Flowers?

25 A. Say what now?

26 Q. Haven't you admitted at some other point, at some
27 other hearing or during some other conversation that you were
28 not sure what month you saw Mr. Flowers walking down Applegate
29 or 51?

1 A. No, I haven't.

2 Q. You never said that?

3 A. (Shook head.)

4 Q. One moment.

5 May I approach the witness again, Your Honor?

6 THE COURT: Um-hum.

7 Q. Mr. Kennedy, I am going to hand you your statement
8 again and give you a chance to peruse it or read through it.
9 Then I want to know if, if this is your statement that you
10 recall giving to Mr. Johnson and Mr. Hargrove jointly.

11 A. I see on here where you got the time changed.

12 Q. I didn't put anything on that, sir. Just go ahead
13 and read it.

14 Show me what you are talking about. I don't think I
15 wrote anything on there. Let me just be correct. I don't
16 want to be confusing.

17 A. The time changed here. (Indicated.)

18 Q. Yeah. I, I didn't have anything to do with that.
19 You finished?

20 A. Yeah.

21 Q. Having read that, does this reflect a conversation
22 you had with Mr. John Johnson and Mr. Johnny Hargrove?

23 A. Do it reflect on the conversation that I had with
24 the both of them at the same time?

25 Q. Yes.

26 A. I talked to them. Talked to Hargrove first. Then I
27 talked to them together.

28 Q. You talked to them together.

29 A. Yeah.

1 Q. And is this a recitation or a conversation you had
2 with Mr. Hargrove and Investigator John Johnson? Is it not a
3 conversation you had with them at some point in time, more
4 particularly September 17, 1996 - yes or no?

5 A. I don't remember that. September. You said
6 September 17. I told you I don't remember the exact date.

7 Q. Okay. If you don't remember, you don't remember.
8 One moment, Your Honor.

9 We tender Your Honor.

10 REDIRECT EXAMINATION BY MR. EVANS:

11 Q. Mr. Kennedy, have you ever identified anyone else
12 other than this defendant as being the one that came by your
13 house at 7:15 on the morning of the murders?

14 A. No, sir.

15 Q. Do you see the person in the courtroom that walked
16 by your house and spoke to you at 7:15 on the morning that the
17 four people were murdered at Tardy Furniture?

18 A. Yes, sir.

19 Q. Would you point to him and identify him, please?

20 A. Right there. (Pointed.)

21 MR. EVANS: May the record reflect he has
22 identified the defendant, Curtis Flowers?

23 THE COURT: Let the record reflect that.

24 Q. (By Mr. Evans:) Do you specifically remember the
25 date of the murder or just that it was the day of the murders?

26 A. Just the day of the murders.

27 Q. And was it before or after you even heard that there
28 was a reward that you told Hargrove and John Johnson that you
29 saw Curtis Flowers walking by your house on Angelica that

1 morning?

2 A. It was after.

3 Q. After the reward came out or before?

4 A. Before.

5 Q. Before.

6 A. Yeah.

7 Q. Did reward have anything to do with what you told
8 them or what you're telling this jury?

9 A. No, it didn't.

10 MR. EVANS: Nothing further, Your Honor.

11 THE COURT: Is he finally excused?

12 MR. CARTER: No, sir. We are going to call him
13 back during our case.

14 THE COURT: Okay. You are going to need to
15 return to the witness room.

16 Who do you have next?

17 MR. EVANS: Catherine Snow.

18 THE COURT: Was she sworn?

19 MR. EVANS: I can't remember if she was here in
20 time to get sworn or not, Your Honor.

21 (THE WITNESS ENTERED THE COURTROOM AND WAS ADMINISTERED
22 THE OATH.)

23 THE COURT: Miss Snow, have a seat up here in
24 the witness stand.

25 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

26 THE COURT: State your name, please.

27 THE WITNESS: Catherine Snow.

28 CATHERINE SNOW, Called on behalf of the State, having
29 been duly sworn, was examined and testified as follows:

1 DIRECT EXAMINATION BY MR. EVANS:

2 Q. Good morning, Miss Snow.

3 A. Good morning.

4 Q. Miss Snow, I want to direct your attention back to
5 1996, July 16, the day of the murders at Tardy Furniture. Do
6 you remember that day?

7 A. I do.

8 Q. Where were you working at that time?

9 A. Angelica.

10 Q. And what hours did you work?

11 A. 7:00 to 3:30.

12 Q. Did you go to work that day?

13 A. I did.

14 Q. What time?

15 A. I was a little late that day.

16 Q. Okay. Just approximately.

17 A. About two or three minutes after 7:00.

18 Q. Okay. So you were a couple of minutes late getting
19 to work.

20 A. Yes.

21 Q. Was there anything significant about your being
22 late? Did you have a problem finding a parking place or
23 anything?

24 A. I did.

25 Q. Where did you stop your car?

26 A. On the far end of Angelica Drive. And there was no
27 parking spot there. I just parked my car there so I could get
28 in and clock in.

29 Q. All right. Did you have an occasion later to go

1 back out to your car?

2 A. I did.

3 Q. About what time?

4 A. 7:15.

5 Q. And why did you go back out to your car?

6 A. Because they have trucks behind that come and pick
7 up our garments or either put off, drop off. And they have to
8 swing out, and I didn't want my car hit. And I asked could I
9 go back and move it.

10 Q. So it's about 7:15 you walked out to move your car.

11 A. I did.

12 Q. Okay. Do you know a person by the name of Doyle
13 Simpson?

14 A. I do.

15 Q. Are you familiar with his car?

16 A. I am.

17 Q. Did you when you walked back out of Angelica at 7:15
18 see Doyle Simpson's car?

19 A. I did.

20 Q. Where was it parked?

21 A. It was parked on the very front. On the very front
22 parking spot on the front line.

23 Q. Did you see anyone around Doyle Simpson's car?

24 A. I did.

25 Q. Who did you see?

26 A. Curtis Flowers.

27 Q. What was he doing?

28 A. Leaning on the front fender on the driving side.

29 Q. How long had you known Curtis Flowers at that time?

1 A. I been knowing of him for a while.

2 Q. So you knew him when you saw him.

3 A. I knew who he was.

4 Q. Did y'all have an occasion to speak?

5 A. We did.

6 Q. What was the content of that conversation?

7 A. How you doing?

8 Q. How far away from him were you?

9 A. About two car passing lengths, driveway from the
10 door, the driveway, the line, parking line.

11 Q. Did you have an occasion to talk to -- well, did you
12 find out that anything had happened with that car that day?

13 A. I did.

14 Q. What did you find out?

15 A. I was -- continued working. I had my earphones on.

16 And I seen all this commotion. I asked what was going on.

17 And they told me that Doyle gun was stolen out his car. And I

18 said I seen somebody leaning against Doyle car that morning.

19 And then or after that, that is when I heard about the
20 murders.

21 Q. You heard about the murders right after that.

22 A. Yeah.

23 Q. What did you hear about the murders?

24 A. They just told me four people had got killed at
25 Tardy.

26 Q. And about how long after you heard that Doyle's gun
27 was stolen, did you hear about the murders?

28 A. Right after that.

29 Q. Did you make any connection between Curtis Flowers

1 being beside the car and the gun and the murders?

2 A. Things went through my mind.

3 Q. What went through your mind?

4 A. That I was -- I seen him, and the gun was missing,
5 four people was killed. And I was scared, because he had seen
6 me too.

7 Q. The defendant had seen you.

8 A. Yes.

9 Q. You knew he knew who you were.

10 A. He did.

11 Q. When you first told the officers, did you actually
12 give his name?

13 A. I didn't.

14 Q. Why did you not give his name?

15 A. First of all, I already said I was scared. I knew
16 him. I knew his family. I didn't want to be involved, and I
17 knew that the gun was stolen. And I knew that people had been
18 killed. I was just scared to death.

19 Q. Okay. When did you finally tell them for sure who
20 he was?

21 A. When they did a picture line-up.

22 Q. Okay. Did you need that line-up to be able to
23 identify him?

24 A. I didn't.

25 Q. You knew who he was.

26 A. I knew who he was.

27 MR. EVANS: Your Honor, may I have the witness
28 step down?

29 THE COURT: Yes.

1 Q. (By Mr. Evans:) Miss Snow, I would like for you to
2 walk out here and stand in the courtroom and show us from the
3 defendant how far away you were when y'all spoke and you saw
4 him at that car?

5 (THE WITNESS STEPPED DOWN FROM THE WITNESS STAND.)

6 A. From here about right here. (Indicated.)

7 Q. What were you looking at when you were talking to
8 him?

9 A. Him. Right in his face.

10 Q. Straight in his face.

11 THE COURT: She is not going to be able to take
12 it --

13 MR. EVANS: You need to speak loud, even over
14 there so everybody can hear you.

15 THE COURT: If we are through with the
16 demonstration, she could come back to the stand.

17 MR. EVANS: You can come back around.

18 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

19 Q. (By Mr. Evans:) And I didn't go that far a minute
20 ago. But if you would, point to and identify the person that
21 you saw leaning up against Doyle Simpson's car the morning the
22 gun was taken out of it.

23 A. Curtis. (Pointed.)

24 MR. EVANS: May the record reflect that she has
25 identified the defendant?

26 THE COURT: Let the record reflect that.

27 MR. EVANS: I'll tender the witness, Your
28 Honor.

29 CROSS-EXAMINATION BY MR. CARTER:

1 Q. Miss Snow, what color was Doyle Simpson's car?

2 A. It was some brown. It was two-tone, brown and some
3 other color, like, I think a dark black, brown or whatever.

4 Q. Two tone. Correct?

5 A. Um-hum.

6 Q. And you know it was that because you had seen it
7 several times; is that correct?

8 A. That's correct.

9 Q. And you had seen it at the parking lot of Angelica
10 many times; is that correct?

11 A. That's correct.

12 Q. Okay. Now, I must tell you, you saw the person
13 standing at Doyle's car on the passenger side, I believe you
14 said. Is that correct?

15 A. I said driving side.

16 Q. Driver's side. I'm sorry. And he was, you said,
17 leaning up against the car.

18 A. Yes, sir.

19 Q. Was he near the door or the front of the car?

20 A. He was on the fender.

21 Q. Fender.

22 A. Fender part.

23 Q. Front fender.

24 A. Um-hum.

25 Q. Now, you said you parked -- now, Angelica is a plant
26 that is located on Angelica Drive. And on this side we have
27 Church Street. And on this side we have Applegate or 51. Is
28 that correct?

29 A. I am not familiar with the names of the streets in

1 Winona.

2 Q. Okay. How, how do you get to -- how would you get
3 into Angelica?

4 A. Coming from 51 from Vaiden.

5 Q. From 51. And you turn off 51.

6 A. On Angelica Drive.

7 Q. On Angelica. Now, when you parked that day, did you
8 park closer to 51 or closer to the street that is on the other
9 side of Angelica?

10 A. Closer to 51.

11 Q. Closer to 51. Were you all the way up to the plant
12 or, were you out on the road that is back there where those
13 houses are located?

14 A. No. I was on the parking -- on the grounds of the
15 plant.

16 Q. The plant parking lot.

17 A. Um-hum.

18 Q. Did you plant -- did you park up near the building,
19 or were you back by the wooded area?

20 A. I wasn't on the back line. I was on the front
21 parking on the end. When you are first coming in, right there
22 on the end, I was parked next to the last parking spot.

23 Q. One moment.

24 May I approach the witness, Your Honor?

25 THE COURT: Um-hum.

26 Q. Can you look --

27 THE COURT: Have those been marked for
28 identification?

29 MR. CARTER: Can I have this marked for

1 identification?

2 (A PHOTO OF DOYLE SIMPSON'S CAR WAS MARKED DEFENDANT'S
3 EXHIBIT NUMBER 2 FOR IDENTIFICATION.)

4 (A PHOTO OF DOYLE SIMPSON'S CAR WAS MARKED DEFENDANT'S
5 EXHIBIT NUMBER 3 FOR IDENTIFICATION.)

6 MR. EVANS: Your Honor, may we approach?

7 (MR. EVANS, MR. HILL, MR. CARTER AND MR. DEGREY
8 APPROACHED THE BENCH FOR THE FOLLOWING BENCH CONFERENCE HAD
9 OUTSIDE THE HEARING OF THE JURY.)

10 MR. EVANS: I don't think what I'm fixing to
11 say is going to affect the witness, but it doesn't matter
12 to me.

13 THE COURT: Just go ahead and tell me what
14 y'all are up here about.

15 MR. EVANS: Your Honor, my objection is
16 discovery violation. The defense has some other
17 pictures, the car that they purported to be Doyle
18 Simpson's, we have not been furnished. And I object to
19 anything being used that hasn't been furnished in
20 discovery.

21 MR. CARTER: Your Honor, if you remember, the
22 last hearing we had, last trial we had here, we had
23 pictures that -- other pictures of that car. And we
24 actually tried to get Sheriff Thornburg to look at and
25 identify this car. So they cannot claim that they don't
26 know that we had other pictures.

27 THE COURT: Have you produced the pictures to
28 them?

29 MR. EVANS: No, sir.

1 MR. DEGREY: We have no idea where these
2 pictures came from.

3 THE COURT: Let's just do this. Hold on.

4 Ladies and gentlemen, I need for you to go to the
5 jury room right now, please. I will call you back in a
6 minute.

7 (THE JURY LEFT THE COURTROOM.)

8 Miss Snow, you can step back in the witness room too
9 for just a second.

10 (THE WITNESS LEFT THE COURTROOM.)

11 THE COURT: Let me see them.

12 (THE PICTURES MARKED FOR IDENTIFICATION WERE HANDED TO
13 THE COURT.)

14 THE COURT: All right.

15 MR. DEGREY: Your Honor, we came in this case
16 years after it started. When we came in this case, we
17 asked for discovery. We were told that discovery had
18 been provided to Mr. Gilmore and Mr. Lumumba and that we
19 were to get all of their files.

20 We actually got an order at one point to get files
21 that weren't forthcoming from Mr. Lumumba. These
22 photographs were in that file. We don't know whether
23 they came from the district attorney, whether they came
24 from defense investigator.

25 This issue came up in the last trial. So they knew
26 we had these photos. We told them in the last trial.
27 The transcript reflects a discussion about it, because we
28 were trying to get in the photo through Sheriff
29 Thornburg. There is no question that these are photos of

1 Doyle Simpson's car.

2 MR. EVANS: Your Honor, to start with, these
3 are pictures of a car that's been junked. We have never
4 seen these photographs. They have never been furnished
5 in discovery. I don't know if it's the same car.

6 And there was absolutely -- it is untrue that these
7 pictures were ever used in any previous trial. I have
8 never seen them before today .

9 THE COURT: Well, here is the question. Here,
10 here is the story. If you asked for discovery, you have
11 got to furnish discovery. I have given written orders
12 allowing you to get discovery and getting everything that
13 the other lawyers had.

14 I have been available if you couldn't -- didn't get
15 that, available to issue orders requiring that so that
16 you could have them. Once you got that stuff, you are
17 then under an obligation to furnish this to them.

18 He doesn't have to come look through the file. You
19 have to furnish a document. You have to either
20 personally hand them to him or furnish a written document
21 saying you've got them and he can come inspect them so
22 that we don't have a issue of well, I had them but I
23 didn't know they were in the file. They knew we had
24 them.

25 It is your obligation to furnish them in discovery.
26 If you haven't done that in writing, how in the world
27 would I know? They furnished -- they furnished written
28 discovery to you.

29 MR. DEGREY: Your Honor, it --

1 MR. CARTER: They may have furnished these
2 pictures --

3 MR. EVANS: We did not.

4 MR. CARTER: -- too for all --

5 MR. DEGREY: Your Honor --

6 MR. CARTER: -- we know.

7 COURT REPORTER: Judge. Judge, they are
8 talking at the same time.

9 MR. DEGREY: Your Honor, it is in the
10 transcript. We, we said --

11 THE COURT: Show me in the transcript where it
12 is.

13 MR. CARTER: I think I've got the old
14 transcript.

15 MR. EVANS: When Bill Thornburg was --

16 THE COURT: Wait. Let's just wait. I want to
17 see this transcript.

18 (MR. DEGREY HANDED SOME PAPERS TO THE COURT.)

19 MR. DEGREY: It begins at the bottom where we
20 are wanting to recall Sheriff Thornburg.

21 THE COURT: Okay. Of course, I can't tell from
22 this what picture we are talking about. It wasn't
23 numbered or identified and all like that.

24 But let's say it's the same, same picture. It
25 still, as it was not in this case, been identified at
26 this point as being anybody's car. Now, she -- you may
27 can ask her whether she can identify it. And if she
28 can -- if, if she can, that proceeds down the road toward
29 relevancy.

1 But then what, what is it being offered for? It
2 obviously is not in the same condition as it was, if
3 that's the car, in the time that Melissa Schoene examined
4 it shortly after the -- this incident occurred. So what,
5 what is it being offered for?

6 MR. DEGREY: Your Honor, Miss Schoene testified
7 that what appears to be a darker brown stripe across the
8 bottom of the car is, in fact, just a shadow. This
9 picture clearly shows that the shadows hitting exactly
10 the same on another day if, in fact, it's a shadow.

11 This witness has already testified that it was a
12 two-tone car. A witness that we -- that has testified in
13 a previous trial for the defense testified it was a
14 two-tone car. And in the last trial Sheriff Thornburg
15 rebutted that by saying it was a shadow. Apparently,
16 Miss Schoene's testimony yesterday was in anticipation of
17 Miss Campbell's testimony.

18 THE COURT: So you are offering it on the basis
19 that it is a two-tone car and not solid brown car. Is
20 that it?

21 MR. DEGREY: Yes.

22 MR. CARTER: Yes, sir.

23 MR. EVANS: Your Honor, this witness has
24 already testified to that.

25 THE COURT: Well --

26 MR. EVANS: Plus --

27 THE COURT: -- if, if she can identify this as
28 Doyle Simpson's car, --

29 MR. EVANS: Your Honor --

1 THE COURT: -- then I will let her look at the
2 pictures and tell whether or not it is a two --

3 MR. EVANS: The Court is going to allow it even
4 though it has never been furnished to the State in
5 discovery.

6 THE COURT: I don't know whether it has been
7 furnished or not.

8 MR. EVANS: It hasn't been.

9 THE COURT: Well, okay. Then go look at it.

10 MR. EVANS: It hasn't been.

11 THE COURT: Okay. You know what the discovery
12 rules are. Go back there and take a look at it and
13 decide whether you want a continuance over this issue.

14 MR. EVANS: Your Honor, this is not something
15 that is continuable. This is something that is very
16 simple. The defense is just purposely not trying to
17 furnish anything to the State, and they are required to.
18 We are talking about --

19 THE COURT: But it is also really not a major
20 issue, if you want my opinion about it. You already have
21 the pictures of the car Melissa Schoene has, has taken.
22 If this is the same car, these are more. They may be
23 cumulative. But I -- it is a jury question as to whether
24 or not they think it is a two-tone car.

25 MR. EVANS: Yes, sir. It is just the idea that
26 they never have to follow the rules.

27 THE COURT: Well, I understand that. But it's
28 not clear to me from the last -- from the transcript from
29 the last hearing as to whether or not y'all had access to

1 these or not.

2 MR. EVANS: Your Honor, it is very --

3 THE COURT: I can't tell. Nobody made a good
4 enough record.

5 MR. EVANS: There were -- there were four
6 photographs used in the last trial. This is the one
7 right here that the defense offered. It was marked. If
8 they want to use the one that they used last time, I have
9 no problem with it. But they have never furnished the
10 State those other photographs. It is not material. It
11 is just the idea.

12 THE COURT: Where are the pictures that y'all
13 introduced?

14 MR. DEGREY: These are the ones that --

15 THE COURT: I want the ones in evidence.

16 MR. EVANS: You got the ones that y'all used
17 last time? This was the defense one that they used.

18 THE COURT: No. I want the ones that are in
19 evidence in this case.

20 MR. EVANS: That's the ones that are already in
21 evidence.

22 THE COURT: Let me see those.

23 (THE PHOTOGRAPHS WERE HANDED TO THE COURT.)

24 Okay. First, why don't we put her back on the stand
25 and see if she can identify it to begin with - we may be
26 arguing about nothing - without the jury present.

27 (THE WITNESS RETURNED TO THE COURTROOM AND WAS SEATED ON
28 THE WITNESS STAND. THE JURY IS NOT PRESENT.)

29 MR. CARTER: May I approach the witness, Your

1 Honor?

2 THE COURT: Um-hum.

3 CONTINUED CROSS-EXAMINATION BY MR. CARTER: (JURY OUT)

4 Q. Miss Snow, can you look at these photographs and
5 tell me whether or not they look like Doyle's car that you
6 seen?

7 THE COURT: No. No. No. Well, excuse me. I
8 take it back. Go ahead.

9 Q. (By Mr. Carter:) Can you identify those? What is
10 it? What are they?

11 THE COURT: First, she has got to tell me
12 whether she can identify it.

13 Q. (By Mr. Carter:) Can you identify those? What's in
14 those -- contained in those pictures?

15 A. This one right here looks like --

16 THE COURT: Ma'am, you have to talk where I can
17 hear you.

18 A. Okay. This one look like Doyle Simpson car.

19 Q. Which one is it?

20 A. Right there. (Handed the picture to Mr. Carter.)

21 Q. And can you tell me what color it shows or colors?

22 A. It's two-tone.

23 Q. And what colors do you believe you see there, the
24 best you can?

25 A. On the top it look like a brown. At the bottom like
26 a black.

27 MR. EVANS: Your Honor, I think we may need to
28 have these marked so we will know for sure.

29 THE COURT: I thought you did. I thought they

1 were marked.

2 MR. CARTER: They are marked.

3 MR. HILL: He has not identified what photos he
4 showed the witness.

5 THE COURT: I understand what your objection
6 was. What I am saying is, I think they have been marked
7 for identification, and he did not do that. So he needs
8 to identify it when he hands it to her, okay, so that the
9 record will reflect what you are doing.

10 Q. (By Mr. Carter:) Miss Snow, I hand you Defendant's
11 Exhibit 21-D.

12 THE COURT: For identification. Isn't that
13 right?

14 COURT REPORTER: I didn't mark that one.

15 THE COURT: Okay. Well...

16 COURT REPORTER: That's 2 for i.d.

17 MR. CARTER: Two.

18 COURT REPORTER: For i.d.

19 Q. (By Mr. Carter:) Miss Snow, I am handing you
20 Defense Exhibit 2.

21 THE COURT: For identification.

22 Q. For identification. Can you identify this?

23 A. This car looks like Doyle Simpson's car.

24 Q. And I also hand you Defendant's 3. Can you identify
25 that?

26 A. This car look like one solid color on that picture.

27 Q. And also, I hand you Defense Exhibit 5. Can you
28 identify that?

29 A. From the shade of this car right here, it look --

1 it's two-tone. But because of the way it taken, it look
2 lighter. So the one that I did point, look more of his car.

3 Q. That would be -- let me hand you Defense Exhibit 3
4 again. In that particular photograph, it shows -- what color
5 does it show?

6 A. Brown.

7 Q. Only brown?

8 A. It's a little hard to tell at the bottom that it's
9 two-tone.

10 Q. Okay. And I hand you again Defense Exhibit 2. Can
11 you identify that?

12 A. This car more of the color Doyle car was.

13 Q. And you do know from seeing Doyle's car several
14 times, that it was two-tone.

15 A. I do.

16 MR. CARTER: Thank you.

17 THE COURT: Anything else from this point?

18 MR. CARTER: No, sir. Not before we call the
19 jury in.

20 THE COURT: Okay. Miss Snow, you need to step
21 back in the witness room just a second.

22 (THE WITNESS LEFT THE COURTROOM.)

23 THE COURT: Which are the -- which are the
24 photographs that y'all wish to question the witness
25 about?

26 MR. CARTER: Just this one here, Your Honor.

27 MR. DEGREY: Your Honor, the one she identified
28 as Doyle's car is the only one we feel like we can ask
29 her about.

1 THE COURT: Well, please tell me what that is.

2 MR. DEGREY: That's Defense Exhibit 2 for
3 identification.

4 THE COURT: She did not identify it as Doyle
5 Simpson's car. She identified it as a car that looked
6 like Doyle Simpson's car. I would venture to say there
7 are a zillion brown Pontiacs in that year made.

8 If Doyle Simpson eventually identifies that as his
9 car, you have the opportunity to call her back and
10 question her about that. But until -- but if she can't
11 say that's his car, then that is not relevant.

12 And I rule that the -- that the probative value is
13 outweighed by the prejudicial effect at this point in
14 time. If you develop it, you might get it in. But at
15 this point in time, it's not admissible.

16 MR. EVANS: Your Honor, again, this may be
17 something that we don't even need to go into, but at this
18 point I would move that the defense be required to
19 furnish us access to these photographs in case I decided
20 at some point to use some of the others.

21 THE COURT: Whatever either one of you have
22 that you are supposed to have furnished, I order you to
23 furnish it, you know, like six years ago.

24 MR. EVANS: Yes, sir.

25 THE COURT: And I also note that she was
26 furnished three photographs of a similar vehicle in a
27 similar position. And she described each one of them as
28 different. And therefore -- and then said that it looked
29 like Doyle's car.

1 So she just can't sufficiently identify it enough to
2 be able to question it at this time. We will see how we
3 go. But right now, it is not admissible, and you can't
4 ask her about it.

5 MR. EVANS: Yes, sir.

6 (THE WITNESS RETURNED TO THE COURTROOM AND WAS SEATED ON
7 THE WITNESS STAND.)

8 THE COURT: Now I'm ready for the jury.

9 (THE JURY RETURNED TO THE COURTROOM.)

10 THE COURT: All right. Mr. Carter you may
11 continue.

12 CONTINUED CROSS-EXAMINATION BY MR. CARTER:

13 Q. Miss Snow, now, you said a few minutes ago that,
14 that you knew of Curtis Flowers. What exactly do you mean by
15 that?

16 A. We would sing at different churches. I sang. He
17 sang. He sang with a group.

18 Q. But had you had any conversation with him before?

19 A. Never been that social.

20 Q. Never had social interaction?

21 A. (Shook head.)

22 Q. Now, isn't it a fact that you never saw Curtis
23 Flowers on the passenger side of that car near the glove
24 compartment; is that correct?

25 A. Correct.

26 Q. You never saw him get in the car.

27 A. I didn't.

28 Q. In fact, that one location on the fender is the only
29 place that you saw Mr. Flowers with respect to that car; is

1 that correct?

2 A. Correct.

3 Q. Now, you testified that you were afraid. Now, isn't
4 it a fact that Mr. Johnson talked to you on the day of the
5 killings?

6 A. True.

7 Q. Did you tell him that particular time that you saw
8 Curtis Flowers at the car?

9 A. I gave no name.

10 Q. You gave no name. And I believe you talked to Mr.
11 Johnson or somebody like a week later. Is that fair to say?

12 A. It's fair to say they kept constantly getting me,
13 talking to --

14 Q. You -- I'm sorry. Go ahead.

15 A. They -- I can't count times.

16 Q. You talked to them several times.

17 A. Um-hum.

18 Q. Possibly as many times as five.

19 A. I couldn't give you exactly how many. All I know I
20 was scared to death each time.

21 Q. Okay. You scared to death. Now, what -- can you
22 tell the jury what, what happened at some point that made you
23 not afraid anymore?

24 A. Nothing made me not afraid. I'm still afraid.
25 Nothing made me not afraid.

26 Q. Well, what is it that gave you the courage or made
27 the decision for you that you should give a name?

28 A. I knew that -- you know, what made me was the fact
29 that I already knew they probably knew who it was, and I knew

1 who it was. So when they did the line-up, I had no problem
2 picking out the picture.

3 Q. Okay. And you picked out the picture, and you told
4 the name.

5 A. Yeah. They asked did I know his name. And I said
6 yes, Curtis Flowers.

7 Q. Okay. So, in fact, you didn't tell them who it was
8 until they showed you a picture line-up.

9 A. Correct.

10 Q. But your testimony is that you knew who it was long
11 before then.

12 A. I did.

13 Q. And you were afraid to tell them earlier.

14 A. I was.

15 Q. Were you promised some kind of protection on the
16 18th when you did make the --

17 A. No, I wasn't. I wasn't promised anything.

18 Q. Now, you also gave Mr. Johnson a description at some
19 point, and you said the person was like 5'6"; is that correct?

20 A. I gave them a height. Anywhere I thought -- I know
21 he was taller than me, and I'm not that good with height. But
22 I know he was anywhere five-something.

23 Q. But isn't it a fact that you told them 5'6" at one
24 point, and you later told them at another point that he was --
25 the person more like 5'10"?

26 A. I don't think I ever gave 5'10".

27 Q. Okay. Now, did you know that money was being
28 offered for information regarding who likely or possibly or
29 could have been involved? Did you know about a reward?

1 A. Later on, as it went on.

2 Q. But you didn't know. You had no idea a reward was
3 offered by the time you made your identification in August.

4 A. When I made my identification, it had nothing to do
5 with money or anything. And I couldn't tell you the exact
6 date that the reward was out or anything. But when I made the
7 identification, money had nothing to do with it.

8 Q. Had nothing to do with it. But do you know if the
9 reward was -- had been offered at the time you made the
10 decision to tell who you saw?

11 A. To be honest with you, I am really not sure.

12 Q. Now, do you recall what dress Mr. Flowers had on -
13 what pants, what shoes, what shirt or whether he had a cap?

14 A. I do know for sure that the top that --

15 Q. The person you saw.

16 A. -- had white. The pants I am not for sure, but I
17 thought maybe black. But, but I knew white was involved, the
18 shirt was.

19 Q. White shirt.

20 A. Excuse me.

21 Q. Now, maybe the jury got a clear picture; I didn't.
22 Doyle's car was parked -- was it behind your car?

23 A. No.

24 Q. Beside your car?

25 A. His was on the very front when you walk out the side
26 door, Doyle's car is right there.

27 Q. The side door you are talking about, is that -- is
28 that side door located closer to Applegate or the next street
29 over?

1 A. As I told you, I am not familiar with the streets.
2 But I know right there where the parking lot is, that is where
3 the side door was, by the parking lot.

4 Q. Okay. Now, there -- as I understand it, there is a
5 back door. I know where the parking lot is. Isn't the
6 parking lot at the back of the building?

7 A. It's on the side.

8 Q. Oh, that's the side.

9 A. That's where the driveway -- where we come in,
10 everybody park.

11 Q. Okay. And his car, was it near the building or near
12 the woods?

13 A. The building.

14 Q. The building. Okay. And before you told Mr.
15 Johnson that you saw Curtis Flowers after seeing a line-up,
16 did you talk to Doyle Simpson?

17 A. I did.

18 Q. Did you tell him who you saw at his car?

19 A. I did.

20 Q. And you told him the name.

21 A. I told him who it was.

22 Q. At what point did you do that?

23 A. It been awhile. I couldn't exactly tell you, but I
24 know I talked to Doyle and I told him.

25 Q. Okay. Now, did you tell Doyle the same day that the
26 incident occurred at Tardy's?

27 A. I am not for sure exactly when. It's been 11 years.
28 But I did tell him.

29 Q. As best you can, do you think you told Doyle who you

1 saw near the time that the incident took place at Tardy's or
2 was it several weeks later or months later?

3 A. I know it wasn't weeks or months. I know that much.

4 Q. How many times did you talk to Doyle about this?

5 A. I couldn't exactly tell you.

6 Q. Now, is Mr. Johnson the only investigator you talked
7 to about this case?

8 A. I've talked to him. I've talked to Doug. And know
9 just -- but I know them are the main ones I talked to, and
10 there have been other ones with them. But as far as what
11 their title was, I don't know.

12 Q. Now, isn't it a fact that Mr. Johnson, someone, came
13 to your job on the day that the killings took place?

14 A. At 3:25.

15 Q. At 3:25.

16 A. Um-hum.

17 Q. And isn't it a fact that you talked to Mr. Johnson
18 the next day as well?

19 A. The next day?

20 Q. Um-hum.

21 A. I couldn't pinpoint exactly what days, but I did
22 talk to him some more after that.

23 Q. Do you remember talking to a guy named Freelon?

24 A. I do.

25 Q. And I believe you might have given him a -- did you
26 give him a statement?

27 A. He came to my house.

28 Q. Now, how many times were you shown pictures to
29 select the person you saw at Mr. Flowers' car?

1 A. Once.

2 Q. And you are sure it was once and not two or three
3 times.

4 A. I'm positive it was once.

5 Q. Are you familiar with Mr. Matthews or Officer
6 Matthews, a highway patrolman? You remember talking to him?

7 A. Name not clicking.

8 Q. On the date that you were shown the pictures, was it
9 just Mr. Johnson, or were there two other guys there as well?

10 A. There was more present.

11 Q. Okay. But you don't know who they were.

12 A. I cannot recollect who all was in there. Like I
13 told you, I was scared. And I do not recollect who all was in
14 there.

15 Q. Now, you were at the police department when you made
16 the selection, right, when you picked out a person out of a
17 photo line up?

18 A. Police come and picked me up. They carried me to a
19 building. I figured that was the police department.

20 Q. Now, okay, you telling me you were still afraid when
21 you were at the police department?

22 A. I was scared every time they came.

23 Q. How many photographs were you shown? Do you
24 remember?

25 A. I don't know how many was on there.

26 Q. More than one though, wasn't it?

27 A. It was.

28 Q. Now, the photograph you saw, were you shown one at a
29 time?

1 A. No.

2 Q. Or were you shown several at a time?

3 A. It was several at a time. It was several at a time.

4 Q. And what -- strike that. Who showed you the
5 pictures? Was it Mr. Johnson?

6 A. He was present. I cannot recollect who put them up
7 there, but he was present.

8 Q. What did he say to you when he showed you the
9 pictures, whoever showed you the pictures? What did they say
10 to you?

11 A. They told me they were going to show me a line-up
12 and could I pick out who I seen. Yeah. And I did. I had no
13 problem picking him out.

14 Q. What number was he in the line-up? Do you know?

15 A. I do not know.

16 Q. Now, you said -- you keep talking about this fear.
17 Did you have any fear of the police officers when you were
18 there?

19 A. Having fear of them? I was just scared. I wasn't
20 in fear of the police. I was just scared.

21 Q. Okay. Isn't it a fact that when you were first
22 shown pictures that you couldn't put a name with the face?

23 A. No, that is not a fact.

24 Q. As a matter of fact, you even talked to Mr. Johnson
25 one time at the hospital; isn't that correct?

26 A. At the hospital?

27 Q. Did Mr. Johnson come to a hospital to talk to you
28 also, yes or no, as best you recall?

29 A. Best I recall, not no hospital.

1 Q. Okay. Now, you said you didn't need to see a
2 picture to know who you saw. If you didn't need to see one,
3 why did you look at one? Did you tell the police you didn't
4 need to see -- you didn't need any pictures to know who it
5 was?

6 A. No, I didn't tell them that.

7 Q. So prior to seeing the pictures on that particular
8 day, whatever day it was, are you telling me that you knew who
9 the person was you saw but for some reason you just wouldn't
10 tell them who it was and -- is that correct?

11 A. That's correct.

12 Q. And once they showed you the pictures, somehow you
13 just couldn't avoid, I guess, not telling at that point and
14 you had to tell.

15 A. Because I had told them I had no problem picking him
16 out of a line-up.

17 MR. CARTER: We tender, Your Honor.

18 REDIRECT EXAMINATION BY MR. EVANS:

19 Q. Miss Snow, who did you see leaning against Doyle's
20 car the morning the gun was stolen out of it?

21 A. Curtis Flowers.

22 MR. EVANS: Nothing further.

23 THE COURT: You may return to the witness room.
24 Who do you have next?

25 MR. EVANS: One second, Your Honor.

26 Clemmie Fleming.

27 THE COURT: I ask you again. Do you remember
28 whether she was sworn?

29 MR. EVANS: No, sir, I do -- most of them were

1 not actually here that early.

2 THE COURT: Well, I didn't remember her being
3 sworn. Y'all kind of keep me apprised of that, if you
4 will.

5 MR. EVANS: Yes, sir.

6 Your Honor, can I have just a minute to pull a file?
7 I thought that box was in here.

8 THE COURT: (Nodded.)

9 (MR. EVANS LEFT THE COURTROOM.)

10 (THE WITNESS ENTERED THE COURTROOM AND WAS ADMINISTERED
11 THE OATH.)

12 THE COURT: Miss Fleming, have a seat right up
13 here.

14 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

15 (MR. EVANS RETURNED TO THE COURTROOM.)

16 THE COURT: State your name, please.

17 THE WITNESS: Clemmie Flemming.

18 MR. EVANS: May I proceed, Your Honor?

19 THE COURT: Um-hum.

20 MR. EVANS: Thank you.

21 CLEMMIE FLEMMING, Called on behalf of the State, having
22 been duly sworn, was examined and testified as follows:

23 DIRECT EXAMINATION BY MR. EVANS:

24 Q. Good morning, Miss Flemming.

25 A. Good morning.

26 Q. Miss Flemming, I want to direct your attention back
27 to July 16 of 1996, the morning of the murders at Tardy
28 Furniture. Do you remember that morning?

29 A. Yes, sir.

1 Q. Did you have --

2 THE COURT: Miss Flemming, I can't hear you; so
3 I know the jurors can't hear you. You are going to have
4 to speak up.

5 THE WITNESS: Yes, sir.

6 Q. (By Mr. Evans:) Did you have an occasion to go to
7 Tardy Furniture that morning?

8 A. Yes, sir.

9 Q. You are going to have to speak louder.

10 A. Yes, sir.

11 Q. What time did you go there?

12 A. At 10:00.

13 Q. About 10:00 in the morning. How did you go to Tardy
14 Furniture about 10:00 that morning?

15 A. With Roy Harris.

16 Q. With Roy Harris. Why did you go to Tardy Furniture?

17 A. To pay on my furniture note.

18 BAILIFF: The jury says they still can't hear
19 her.

20 THE COURT: Ma'am, that lady all the way over
21 there in the corner has to hear you. Okay.

22 Q. (By Mr. Evans:) That microphone doesn't amplify
23 your voice. So just speak real loud.

24 A. To pay on my furniture note.

25 Q. You say it was about 10:00 in the morning.

26 A. Yes, sir.

27 Q. What was your physical condition at that time?

28 A. I was pregnant.

29 Q. How far along were you?

1 A. About five months.

2 Q. Did you, in fact, at that time go in and pay on your
3 note at Tardy Furniture?

4 A. No.

5 Q. Why not?

6 A. I didn't feel like it.

7 Q. You didn't feel like it. Was it because of the
8 pregnancy?

9 A. Yes, sir.

10 Q. Did you -- what direction did y'all pull, when you
11 came to the store?

12 A. We, we went behind. We came in front of the store.
13 Then we pulled behind the store.

14 Q. Okay.

15 A. On the side of the road beside it.

16 Q. On the road that goes beside Tardy Furniture.

17 A. Yes, sir.

18 Q. Did you see anything as you pulled on to the road
19 beside Tardy Furniture?

20 A. Yes, sir.

21 Q. What did you see?

22 A. Curtis.

23 Q. Curtis who?

24 A. Flowers.

25 Q. Where was Curtis Flowers when you pulled beside
26 Tardy Furniture around 10:00 that morning?

27 A. Running on the side of it.

28 Q. How long had you known Curtis Flowers?

29 A. Ever since I can remember.

1 Q. So basically all your life.

2 A. Yes, sir.

3 Q. Is there any question about who you saw running by
4 Tardy Furniture that morning?

5 A. No, sir.

6 Q. Did you ever have an occasion to go back out there
7 and show any officers where you saw him running?

8 A. Yes, sir.

9 Q. Who did you meet or go out there with?

10 A. John Jones.

11 Q. And did you have an occasion to actually step off
12 how far from the store it was that you actually saw him when
13 you first saw him running?

14 A. Yes, sir.

15 Q. How many steps was that?

16 A. Ninety-two.

17 Q. And is that your steps?

18 A. Yes, sir.

19 Q. Was he running toward or away from Tardy Furniture?

20 A. Away.

21 Q. How was he running?

22 A. Like somebody were after him.

23 Q. Was he jogging or running fast?

24 A. Running fast.

25 Q. Did you make any comments about who you saw?

26 A. I said it's Curtis.

27 Q. So you told Roy Harris that was driving you that's
28 Curtis.

29 A. Yes, sir.

1 Q. So you knew who he was immediately.

2 A. Yes, sir.

3 Q. Which direction did Roy drive after you saw Curtis
4 running?

5 A. On like up Church Street and then down Powell
6 Street.

7 Q. Okay. Now, there used to be -- I don't know. I
8 don't think they are both still there. There used to be two
9 big trees right over there on the side close to Tardy
10 Furniture, didn't it?

11 A. Yes, sir.

12 Q. Which tree was -- or where was he in relationship to
13 the trees when you saw him running?

14 A. By the tree.

15 Q. By which tree?

16 A. The first tree.

17 Q. The first one closest to Tardy Furniture.

18 A. Yes, sir.

19 Q. All right. Which direction -- let me get back to
20 that. Which direction did y'all go in the car after you saw
21 him running?

22 A. Went left.

23 Q. You took a left.

24 A. Yes, sir.

25 Q. Do you know the name of the street you look a left
26 on?

27 A. Carrollton Avenue, I think.

28 Q. Carrollton Avenue. Where did you go from there?

29 A. Well, I went over my sister's house.

1 Q. I mean which roads did y'all go on.

2 A. Up Carrollton Avenue and down Powell Street. Down
3 Powell Street.

4 Q. All right. And which direction did you go from
5 there?

6 A. We come to the highway.

7 Q. Which --

8 A. On 51.

9 Q. Highway 51. Did you come back up?

10 A. Go back -- yes, sir.

11 Q. On 51. So you went -- took a left on Carrollton,
12 hit Powell Street, went down to the highway and then came back
13 up 51; is that correct?

14 A. Yes, sir.

15 Q. Did you have an occasion to see Curtis Flowers again
16 as you came up 51?

17 A. Yes, sir.

18 Q. Where did you see him then?

19 A. Fixing to cross the highway.

20 Q. He was crossing the highway.

21 A. Yes, sir.

22 Q. Which direction was he going?

23 A. I guess his daddy was working at the store. I guess
24 he was going to the store.

25 Q. All right. What store is that?

26 A. Stop-n-Go.

27 Q. Was he crossing there at the store?

28 A. I guess he was going to the store. I don't know.
29 He could have been going home.

1 Q. Okay. But I mean that is where he was crossing.

2 A. Yes, sir.

3 Q. You don't know where he was going.

4 A. (Shook head.)

5 Q. I am just asking you where he was.

6 A. Yes, sir.

7 Q. Miss Fleming, is there any question about who you
8 saw running about 10:00 the morning of the murders, close to
9 Tardy Furniture, going away from Tardy Furniture?

10 A. No, sir.

11 MR. EVANS: Tender the witness, Your Honor.

12 One second.

13 Q. (By Mr. Evans:) If you would, point to and identify
14 the person you saw running away from Tardy Furniture the
15 morning of the murders.

16 A. Right. (Pointed.)

17 MR. EVANS: May the record reflect that she has
18 identified the defendant?

19 THE COURT: Let the record reflect that.

20 CROSS-EXAMINATION BY MR. CARTER:

21 Q. Miss Flemming, is it possible to turn off
22 Carrollton, Carrollton on to Powell?

23 A. No, sir.

24 Q. So, so what road did you and Mr. Johnson take after
25 you left Tardy?

26 A. We came off Carrollton Avenue, that little store.
27 It's a street right there beside it, and then you go on down.
28 And then you come to Powell Street. You got to take a right
29 and get on Powell Street.

1 Q. So, in fact, you had to take another street to get
2 to Powell from Carrollton; is that correct?

3 A. Yes, sir.

4 Q. Okay. Now, this person you saw running, what kind
5 of clothes did they have?

6 A. I don't know. I just know his face.

7 Q. Okay. And so when y'all drove by, he turned and
8 looked towards the vehicle. Is that your testimony?

9 A. I don't know what he was looking at. He was just
10 running and --

11 Q. When you turned from Front Street in front of
12 Tardy's and make that right on Carrollton --

13 A. Um-hum.

14 Q. -- the person you saw running, was he in front of
15 you or behind you?

16 A. In front of me.

17 Q. Was he in the road, or was he on the grass?

18 A. On the grass.

19 Q. On the grass.

20 A. On the side.

21 Q. Now, you didn't see this person on Front Street; is
22 that correct?

23 A. No. Not on Front Street.

24 Q. Okay. Now, you didn't see this person -- there is a
25 street right behind Tardy's called Vine. You know that little
26 street? Some people may call it Alley Way, right behind
27 Tardy's. Do you recall that there is a street there?

28 A. Beside it?

29 Q. Hmm?

1 A. What street you say?

2 Q. Isn't there a street that runs parallel right behind
3 Tardy's?

4 A. It's a street right there.

5 Q. You didn't see Mr. -- that person on that street,
6 did you? This person you saw, were they near, I think Church
7 Street is the street that you run into off Carrollton. The
8 person you saw, was he at Church Street?

9 A. Church Street. No.

10 Q. He was on Carrollton. Which way did this person go
11 after they turned off Carrollton?

12 A. I wasn't paying no attention like that.

13 Q. Okay. Now, what period of time did you observe this
14 person? Was it just a quick glance, and you turned and you
15 never looked again? Or did you turn around and actually take
16 a long look at this person?

17 A. No.

18 Q. Just took a quick look?

19 A. Yes, sir.

20 Q. Okay.

21 BAILIFF: Your Honor, the jury keeps saying
22 they can't hear her testimony.

23 THE COURT: Miss Flemming, you just have to
24 talk louder than you are talking. Okay?

25 THE WITNESS: (Nodded.)

26 Q. (By Mr. Carter:) At what point did you tell Mr.
27 Johnson or Mr. Evans or somebody that you saw Curtis Flowers?

28 A. When they came out to my house.

29 Q. How long ago was that after the killings at Tardy?

1 A. I don't know. I wasn't going to say nothing. It
2 wasn't my business.

3 Q. Is it fair to say that it was April 11, 1997? Can
4 you dispute that?

5 A. I don't know when it was.

6 Q. But you do know that it was several months
7 afterwards that the incident took place at Tardy; is that
8 correct?

9 A. Yes.

10 Q. And you gave a taped statement; is that correct?

11 A. Yes.

12 Q. And you said he was running like somebody was after
13 him. How, how -- give us a description of how you look when
14 somebody is --

15 A. He was just running.

16 Q. Just running.

17 A. Um-hum.

18 Q. Now, so the truth is that person that was running,
19 you don't know if they were running like somebody was after
20 them or not; is that correct?

21 A. I don't know if anybody was after them or not.

22 Q. What made you think the person was running like
23 somebody was after them? You do agree that that is a
24 description you gave at some point; is that correct?

25 A. Um-hum.

26 Q. What made you think this person was running like
27 somebody was after them?

28 A. I was just trying to describe how he was running.

29 Q. Did you see -- was this person carrying anything

1 that you could tell?

2 A. I don't know if he was. I don't know.

3 Q. Did the person have a cap on, or do you know?

4 A. (Shook head.)

5 Q. Now, did you say at some point that this person was
6 running towards Campbell, or is that a mistake on somebody
7 else's part?

8 A. I ain't said they were running toward Campbell.
9 Towards --

10 Q. Towards Campbell?

11 A. Towards Campbell. No, sir.

12 Q. You didn't say that?

13 A. (Shook head.)

14 Q. Now, isn't it a fact that you -- strike that.

15 Now, the day that you went to Tardy's, you said you
16 didn't go in Tardy's. Did y'all actually stop at Tardy's and
17 sit there for a while? Did Mr. Harris stop his car, pull up
18 in front of Tardy's?

19 A. He stopped and pulled right there.

20 Q. How long did y'all sit there, if at all?

21 A. I tried to get him to go in. He didn't want to go
22 in. I said well, let's go.

23 Q. Did you know about a reward being offered for help
24 on identifying who could have been involved in this?

25 A. I don't care about no reward.

26 Q. You didn't hear about one.

27 A. His life more important than a reward. I don't do
28 that.

29 Q. I'm sorry.

1 A. I said his life more important than a reward. I
2 wouldn't of did that.

3 Q. Do you know Stacy Wright?

4 A. Yes.

5 Q. Do you know Latarsha Blissett?

6 A. Yes.

7 Q. Is it fair to say that they are or were friends of
8 yours?

9 A. My cousins.

10 Q. Aren't they also friends though?

11 A. Um-hum.

12 Q. Now, at some point you, you owed Tardy Furniture
13 Store some money, is that correct, for some furniture? Did
14 you ever pay them?

15 A. My brother supposed to have been paying it.

16 Q. I'm sorry.

17 A. My brother supposed to have been paying it.

18 Q. Okay. But you know you didn't pay. Were you with
19 your brother when he paid it?

20 A. No.

21 Q. Okay. So you really don't know if he paid it or
22 not; is that correct?

23 A. No.

24 Q. Now, after you and Mr. Harris left, where did --
25 where did Mr. Harris finally take you?

26 A. Over my sister's house.

27 Q. What is your sister's name?

28 A. Mary Flemming. Mary Flemming.

29 Q. Is it the same person as Mary Ella?

1 A. Yes.

2 Q. When you got to your sister's house, who else was
3 there?

4 A. My other sister niece.

5 Q. Wasn't there somebody else there also or somebody
6 came up later?

7 A. I don't know. One of my sister's friends.

8 Q. Okay. Do you remember his name or nickname?

9 A. B.T.

10 Q. Okay. And is it a fact that you actually went
11 somewhere with them later?

12 A. No.

13 Q. You didn't get in the car with your sister and this
14 B.T. and go somewhere later.

15 A. (Shook head.)

16 Q. Okay. Okay. When you got down to -- correct me if
17 I'm wrong, but I think you said it was about 10:00 when you
18 got down to Tardy's; is that correct?

19 A. Yes.

20 Q. And you didn't see any -- anything unusual going
21 around, around in the area; is that correct?

22 A. No.

23 Q. In fact, was there other cars at all parked in that
24 location?

25 A. Yes.

26 Q. Where were they parked?

27 A. Over on like -- over like behind a car.

28 Q. Behind where y'all park?

29 BAILIFF: Your Honor.

1 A JUROR: We are still having problems hearing
2 her.

3 THE COURT: Okay. You hear that, Miss
4 Flemming?

5 THE WITNESS: Yes, sir.

6 THE COURT: See, I couldn't even hear what you
7 just told me. You have to talk louder. Okay?

8 THE WITNESS: (Nodded.)

9 THE COURT: Speak up now. Answer the man's
10 question.

11 A. Yes.

12 Q. Were there a lot of cars, or was it just one or two,
13 as best you recall?

14 A. I don't know.

15 Q. What was your answer?

16 A. It was some parked on the other side. Like, we were
17 parked in front, pulled in front of the store. Some behind
18 it.

19 Q. Okay. Did you see an old man walking the sidewalk?

20 A. No.

21 Q. Do you know Mr. Sam Jones?

22 A. Yes.

23 Q. You didn't see him?

24 A. No.

25 Q. Did you tell your sisters what you had witnessed
26 when you got to their house?

27 A. No.

28 MR. CARTER: One moment, Your Honor. I think
29 I'm about -- one moment, Your Honor.

1 Q. (By Mr. Carter:) Miss Fleming, one final question.
2 Strike that. I'm sorry.

3 We tender.

4 REDIRECT EXAMINATION BY MR. EVANS:

5 Q. Miss Fleming, speak loud. When did you first make a
6 comment to Roy Harris there goes Curtis Flowers?

7 A. When I was in the car with him.

8 Q. When you saw him running away from the store; is
9 that right?

10 A. I don't know where he was running from.

11 Q. Was he running from the direction of the store?

12 A. Yes, sir.

13 Q. Okay. Miss Fleming - I'll turn this around in just
14 a minute - but can you see on this photograph the road that
15 you saw the defendant, Curtis Flowers, running down?

16 A. Yes, sir.

17 Q. Would you step down, please?

18 A. (Complied.)

19 Q. Point out for the ladies and gentlemen of the jury
20 the area where you saw this defendant running.

21 A. (Indicated.)

22 Q. And you are pointing to an area that has a red "X"
23 on it.

24 A. (Nodded.)

25 Q. You need to speak up.

26 A. Yes, sir.

27 Q. Did you previously put an "X" on the spot that you
28 saw him running?

29 A. Yes, sir.

1 Q. You may take the seat.

2 A. (Complied.)

3 MR. EVANS: Nothing further, Your Honor.

4 THE COURT: You may return --

5 MR. EVANS: Oh, one second. Oh, yes, sir. I'm
6 sorry. I did not identify what chart I was using.

7 THE COURT: Okay.

8 MR. EVANS: For the record, the chart is S-A-5,
9 Your Honor.

10 THE COURT: I believe it is a photograph, not a
11 chart.

12 MR. EVANS: Yes, sir. Well, yes, sir.

13 THE COURT: Okay.

14 MR. EVANS: Blown-up photograph.

15 THE COURT: All right. Okay. Miss Fleming,
16 you need to step down.

17 Ladies and gentlemen, we are going to take a break
18 at this time.

19 (THE JURY LEFT THE COURTROOM.)

20 MR. CARTER: We still need her, Your Honor. We
21 still need her as a witness.

22 THE COURT: I didn't let her go. I sent her
23 back to the witness room.

24 Court will be in recess.

25 (A RECESS WAS TAKEN. PROCEEDINGS RESUMED IN OPEN COURT.

26 MR. EVANS, MR. HILL, MR. CARTER, MR. DEGREY AND THE DEFENDANT
27 WERE PRESENT. PROCEEDINGS WERE AS FOLLOWS:)

28 (THE JURY RETURNED TO THE COURTROOM.)

29 MR. HILL: Your Honor, we are going to call

1 Sheriff Thornburg. I think we need to swear him.

2 (THE WITNESS ENTERED THE COURTROOM.)

3 THE COURT: You were sworn yesterday, weren't
4 you?

5 THE WITNESS: Yes, sir.

6 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

7 THE COURT: State your name, please, sir.

8 THE WITNESS: I'm Bill Thornburg.

9 BILL THORNBURG, Called on behalf of the State, having
10 been duly sworn, was examined and testified as follows:

11 DIRECT EXAMINATION BY MR. HILL:

12 Q. Good morning, Mr. Thornburg. Tell the ladies and
13 gentlemen of the jury please if you hold an elected position
14 here in Montgomery County, Mississippi.

15 A. I do. I was elected sheriff of Montgomery County.

16 Q. How long have you been in law enforcement, Sheriff?

17 A. About 30 years.

18 Q. And were you in -- were you employed by the
19 Montgomery County Sheriff's Department in 1996?

20 A. I was.

21 Q. Specifically in July and on July 16 of 1996, were
22 you a deputy sheriff here?

23 A. I was.

24 Q. And what was your badge number or radio call number
25 or whatever at that time?

26 A. Montgomery 2.

27 Q. Okay. Sheriff, I want to ask you, do you recall the
28 morning of July 16, 1996?

29 A. Yes, sir, I do.

1 Q. Can you tell us where you were at about 10:20 that
2 morning, 10:20 a.m.?

3 A. I had been in justice court, and it was over. And I
4 was in the circuit clerk's office.

5 Q. All right. And at about 10:20 that morning did you
6 receive any phone calls requesting assistance or alarming you?

7 A. I did.

8 Q. And what did you do when you got that call?

9 A. I came running through the courtroom here, and there
10 was nobody in here. And I went by justice court, and James
11 Taylor Williams was there. And I told them there had been a
12 shooting at Tardy's. We proceeded.

13 Q. Was that the nature of the call that you got about
14 the shooting at Tardy's?

15 A. Yes, sir.

16 Q. Now, you said you told who?

17 A. James Taylor Williams.

18 Q. Who is James Taylor Williams?

19 A. He is a Mississippi highway patrol trooper.

20 Q. And what did you do after you told him that there
21 had been a shooting at Tardy's?

22 A. I ran out, got in my patrol car and went straight to
23 Tardy's.

24 Q. How long did it take you to get there, Sheriff,
25 after you got the news?

26 A. Not long. I'd say no more than two or three
27 minutes.

28 Q. Okay. What did you observe when you got to Tardy
29 Furniture?

1 A. Well, I remember seeing two officers. One of them
2 was Johnny Hargrove I know. But I don't remember who the
3 other one was. But I went in, in the store.

4 Q. If you will, Sheriff, just tell the ladies and
5 gentlemen of the jury what you saw when you entered Tardy
6 Furniture Store that morning on July 16, 1996, when you went
7 in after 10:20 in the morning.

8 A. I proceeded going toward the back, and there was the
9 counter back there where they conducted business. And there
10 was three bodies on the floor.

11 Q. Do you know who those bodies were? Did you know
12 those people?

13 A. Yes, sir.

14 Q. If you will, please, tell the ladies and gentlemen
15 of the jury who it was that you saw. I think you said three
16 people laying on the floor. Who were those three people?

17 A. Bertha Tardy. Carmen Rigby. And Robert Golden.

18 Q. Okay. Sheriff, would you recognize pictures of what
19 you saw inside the store if you were to see them again?

20 A. Yes, sir, I believe I would.

21 Q. I want to put up a poster, Sheriff. This is 16-A,
22 18-A, 17-A and 19-A. Sheriff, I want to ask you, if you
23 would, would you just step down, please, over here to this
24 poster?

25 A. (Complied.)

26 Q. And I would like for you, if you could, would you
27 point out -- tell us first of all if you recognize who is
28 shown in these photographs.

29 A. This is Robert Golden.

1 Q. Is that the way he was when you saw him that
2 morning?

3 A. Yes, sir.

4 Q. Also, Sheriff, I am going to put up another chart.
5 I want to ask you, if you would, look at this and tell us do
6 you recognize who that is shown there.

7 A. It's Bertha Tardy.

8 Q. Well, let's see. I think -- I think this is Rigby,
9 isn't it?

10 A. That's Carmen. That's Carmen Rigby.

11 Q. Okay. Do you remember seeing her in the store that
12 morning like that?

13 A. Yes, sir.

14 Q. Wearing that colored--

15 A. Yes, sir.

16 Q. -- outfit there.

17 A. Right.

18 Q. Now, how many people did you see there, Sheriff?

19 A. Three.

20 Q. Did you know -- did you later on find out if
21 somebody else, a fourth person, had been removed?

22 A. Yes, sir.

23 Q. Taken away from there?

24 A. Yes, sir.

25 Q. Who was that?

26 A. Derrick Stewart.

27 Q. All right. I'll ask you to have a seat back on the
28 stand, please.

29 A. (Complied.)

1 Q. Sheriff, when you went in that morning you said that
2 Chief Hargrove was present there before you.

3 A. Yes, sir.

4 Q. When you went in the store, I want to talk to you
5 about what, if anything, you may have seen as far as evidence
6 on the floor in or around the bodies that you have pointed out
7 to us. Did you see any what we might call firearms evidence
8 anywhere in there?

9 A. Yes, sir, I did.

10 Q. Would you describe what you saw?

11 A. I saw some hulls.

12 Q. What do you mean by hulls, Sheriff?

13 A. Well, bullet had already been shot out of them. It
14 was just a hull in the floor.

15 Q. Okay. And were you able to tell what apparent
16 caliber they were?

17 A. Yes, sir. I got down, squatted down in the floor.
18 I took my pen and picked it up and looked. And it was a 380
19 caliber.

20 Q. And so you were reading that 380 off of the --

21 A. Yes, sir.

22 Q. -- base of the hull.

23 A. Yes, sir.

24 Q. Okay. Did you see any other evidence on the floor
25 of that store, besides firearms evidence?

26 A. Well, there was a big pool of blood there, and there
27 was some shoe tracks in it.

28 Q. Okay. You said there was a pool of blood and some
29 shoe tracks --

1 A. Shoe print.

2 Q. -- coming off of that pool of blood.

3 A. Yes, sir.

4 Q. Okay. Did you observe those when you first went in,
5 those shoe tracks?

6 A. Yes, sir, I saw them. I didn't think too much about
7 it till they was checking shoe prints.

8 Q. Okay. Now, specifically, we need to know at this
9 time did you step in the blood there and make any of those
10 shoe tracks?

11 A. No, sir, I did not.

12 Q. Are you certain of that?

13 A. I am positive.

14 Q. Okay. What kind of shoes or boots did you have on
15 that morning, Sheriff?

16 A. I had on western boots, what most people call cowboy
17 boots.

18 Q. Okay. Do you recall the weather that day?

19 A. It was very hot.

20 Q. What about in the afternoon?

21 A. It come a thunder shower. Sure did.

22 Q. While you were there on the scene that morning,
23 Sheriff, did you get another phone call or another request for
24 assistance while you were still at Tardy's?

25 A. I sure did.

26 Q. Will you describe for the ladies and gentlemen of
27 the jury what kind of call that was and what you did in
28 response to it?

29 A. I got a call that there had been a break in at

1 Angelica, a car had been broken into and a gun stolen.

2 Q. So when you got information or received a call that
3 there had been a car burglary and a gun stolen at Angelica,
4 what did you do then?

5 A. I went down to Angelica to investigate it.

6 Q. How far is Angelica from where you were?

7 A. It's probably a mile, close to it.

8 Q. Did you know -- when you got there, did you know
9 whose car had been broken into?

10 A. I did not.

11 Q. What did you do when you got to Angelica?

12 A. I went in the front office and talked to the
13 manager, and she didn't know anything about it.

14 Q. Okay. Was Doyle Simpson present when you got to
15 Angelica?

16 A. No, sir.

17 Q. Did you look for him? How did you -- did you do
18 anything to ascertain whose car it was? Or what did you do to
19 find out, to further investigate the report that you got about
20 a car being broken into and a pistol stolen?

21 A. The lady that I talked to, I believe, went to the
22 back and inquired about it and come back and told me Doyle
23 Simpson.

24 Q. Okay. So after you got information that Doyle
25 Simpson was the complainant about his car being broken into,
26 did you see Doyle Simpson while you were still there?

27 A. Yes, sir. I saw him about 15 to 20 minutes before
28 he came back.

29 Q. Did he drive back there?

1 A. He did.

2 Q. Did you meet him when he came back?

3 A. He came on inside, and we had a little conversation.

4 Q. Okay. Did he tell you or did you obtain a
5 description of the property that had been stolen?

6 A. He told me it was a .380, but he didn't know the
7 brand name.

8 Q. A .380 what?

9 A. Semi-automatic pistol.

10 Q. Okay. Did you -- when you found out from Doyle
11 Simpson, when you talked to him about his complaint, did you
12 have occasion to look at his car?

13 A. Yes, sir.

14 Q. Sheriff, I want to ask, if you would, just to step
15 down here for just a minute, please.

16 A. (Complied.)

17 Q. Sheriff, I want to direct your attention to some
18 photographs on this chart. These are State's Exhibits 100-A,
19 99-A and 101-A. And I would ask you, sir, just to look at
20 those for a minute and tell us if you recognize those photos.

21 A. This is the glove compartment of his car, been pried
22 open.

23 Q. All right. Now, you've got to speak loud enough.
24 The court reporter has got to hear you.

25 Question number one, did you -- do you recognize these
26 photos?

27 A. Yes, sir. That's the car. This is the glove
28 compartment that was broken into.

29 Q. Sheriff, I want to ask you to stand over on that

1 side.

2 A. (Complied.)

3 Q. I guess after Mr. Simpson told you that his car had
4 been broke into you wanted to look at it and you said you did;
5 is that right?

6 A. Yes, sir.

7 Q. When you saw the glove box -- and I'll refer you to
8 this picture marked State's 101-A, did you examine the inside
9 of the car?

10 A. I looked -- I got to sit down on the seat, and I
11 looked at it. I could see the pry marks where it had been
12 pried open --

13 Q. Okay.

14 A. -- looked like with a screwdriver or a tire iron.

15 Q. Okay. You can have your seat back, if you will
16 Sheriff.

17 A. (Complied.)

18 Q. Now, Sheriff, I know that you assisted in the
19 investigation. You, you were present from the first that
20 morning. Did you ever -- and besides talking to Mr. Simpson,
21 did you ever have a chance to actually go out to his house?

22 A. I did.

23 Q. And what was the purpose for you going out to Mr.
24 Simpson, Doyle Simpson's house?

25 A. Well, his gun had been stolen, and there had been a
26 shooting at Tardy's with the same caliber gun. And --

27 Q. So let me ask you -- let me stop you right there.
28 Before you left Tardy's, you looked at those hulls on the
29 floor.

1 A. Yes, sir.

2 Q. And you saw what caliber they were.

3 A. .380.

4 Q. And when you went to the report of the stolen
5 weapon, did you determine what caliber that was?

6 A. Yes, sir.

7 Q. Was it the same caliber?

8 A. Same caliber. .380 pistol.

9 Q. All right. And then following up, we were talking
10 about you going to Doyle's house. Explain to us why you went
11 there, to Doyle's house.

12 A. Went out there to look for some projectiles and
13 hulls where he had been shooting his gun.

14 Q. Did he provide you that information, where he had
15 fired the weapon?

16 A. Yes, sir.

17 Q. And whereabouts was this house that you went to,
18 Sheriff?

19 A. Out on Poorhouse Road.

20 Q. Where -- when you got to the house, who, if anyone,
21 accompanied you to that house?

22 A. Doyle was with me.

23 Q. Okay. Did he show you where he had been shooting
24 the gun?

25 A. Standing at the back steps, shooting at cans and
26 bottles in a cutout on a cedar post.

27 Q. So, when you saw that post, did you examine it?

28 A. I did.

29 Q. What did you notice about the post, Sheriff?

1 A. I went down to it, and there was several bullet
2 holes in it.

3 Q. Okay. And when you saw those bullet holes, what, if
4 anything, did you do?

5 A. I took my pocket knife out, which is a little one,
6 and poked in the hole. And there was a projectile in there.
7 And I took my knife and cut it out.

8 Q. All right. Now, when you cut it out, did you carve
9 on the wood? You didn't carve on the metal?

10 A. Right. Just the wood.

11 Q. And were you able to obtain a projectile out of that
12 post?

13 A. I did.

14 Q. Sheriff, I want to show you an exhibit, if I may.
15 This has been marked as State's Exhibit 82 for identification.
16 I want you to look at that. Look at the writing on it. Tell
17 us, ladies and gentlemen of the jury, if you can identify that
18 exhibit.

19 A. Yes, sir.

20 Q. And if you will, tell us how you identified that.

21 A. It's got my initials on it. BT SO2.

22 Q. SO2. That was what I asked you awhile ago. That
23 was your badge number back at the time.

24 A. Yes, sir.

25 Q. And is that dated, Sheriff? Is there a date on
26 there when you got that?

27 A. 7-19 of '96.

28 Q. 19th. That would be the third day after the shooting;
29 is that right?

1 A. Yes, sir. Yes, sir.

2 Q. Okay. And what is that that you have there,
3 Sheriff? Tell us what that is in that envelope.

4 A. It's a projectile out of a .380 pistol, Doyle
5 Simpson.

6 Q. Now, is that the one you dug out of the post that
7 you just told the jury about?

8 A. Yes, sir.

9 MR. HILL: Your Honor, we ask that State's
10 Exhibit Number 82 be received.

11 MR. CARTER: Let me see it, Clyde.

12 No objection.

13 THE COURT: Let it be admitted.

14 (THE BULLET BILL THORNBURG TOOK FROM DOYLE SIMPSON'S POST
15 PREVIOUSLY MARKED S-82 FOR IDENTIFICATION WAS ADMITTED INTO
16 EVIDENCE.)

17 Q. (By Mr. Hill:) Sheriff, with regard to that bullet
18 or projectile that you dug out of the post and labeled there,
19 what did you do with that after you got it?

20 A. I took it to E.O.C. and turned it over to Jack
21 Matthews, investigator.

22 Q. Officer Matthews, investigator for what law
23 enforcement agency at the time?

24 A. For the state.

25 Q. Highway patrol investigator.

26 A. Yes, sir.

27 Q. All right, sir. And did you have an occasion to go
28 back out to Doyle Simpson's house after that trip where you
29 dug that bullet out?

1 A. Yes, sir, I did.

2 Q. And what was the purpose for going back out to
3 Doyle's house a second time?

4 A. Investigator Matthews and myself went back out there
5 to see if we could find anymore projectiles or hulls.

6 Q. So you went back out there looking for more
7 evidence.

8 A. Yes, sir.

9 Q. On the 1st of August, 1996, did you and Investigator
10 Matthews, after you got back to Doyle's house, did y'all
11 recover any additional evidence?

12 A. Yes, sir, we did.

13 Q. I'm going to show you State's Exhibit Number 80.
14 I'm sorry. Strike that. I am going to show you State's
15 Exhibit 81. State's Exhibit Number 81, ask you to look at
16 that exhibit, please, sir.

17 A. (Complied.)

18 Q. You recognize that, Sheriff?

19 A. I don't see my initials on here anywhere, but it's
20 the day we got the second projectile out of the post out
21 there.

22 Q. All right. You see the date and all the writing on
23 it?

24 A. Yes, sir.

25 Q. You recognize Investigator Matthews' writing on
26 there?

27 A. Yes, sir.

28 Q. Okay. All right. What did y'all do when you went
29 back out to Doyle's house?

1 A. We found another bullet in there in --

2 Q. In --

3 A. -- in the post.

4 Q. In the post.

5 A. And took a hatchet and chipped away till we got
6 close to the bullet to get it out.

7 Q. Okay. And that was you and Investigator Matthews.

8 A. Right.

9 Q. Now, who packaged that envelope right there?

10 A. Investigator Matthews.

11 Q. Were you present when he did that?

12 A. Yes, sir.

13 Q. Okay. Do you feel the projectile in that package?

14 A. Yes, sir.

15 Q. Can you look at it on the end and see it?

16 A. Yes, sir.

17 Q. Now, is that -- I think this is dated -- excuse me.
18 Let me see. Who is B-42?

19 A. That is Matthews.

20 Q. Okay. And this date right here, August 1 - I
21 believe that is what it is - is that the date y'all went out
22 there?

23 A. Yes, sir.

24 Q. Okay. Is that the bullet that was taken out of the
25 post that you and Officer Matthews --

26 A. Yes, sir.

27 Q. -- chipped out?

28 A. Yes, sir.

29 MR. HILL: State's 81, Your Honor, we offer

1 into evidence.

2 MR. CARTER: No objection, Your Honor.

3 THE COURT: Let it be admitted.

4 MR. HILL: Ask it be received.

5 (THE BULLET FROM DOYLE SIMPSON'S POST PREVIOUSLY MARKED
6 STATE'S EXHIBIT NUMBER 81 FOR IDENTIFICATION WAS ADMITTED INTO
7 EVIDENCE.)

8 Q. (By Mr. Hill:) Sheriff, after or during your
9 participation in the investigation of this case, did you have
10 an occasion to learn where Curtis Flowers was living and who
11 he was living with?

12 A. Yes, sir.

13 Q. Who was he living with, first of all?

14 A. Connie. I don't remember her last name.

15 Q. Moore.

16 A. Moore.

17 Q. Is that right?

18 A. Yes, sir.

19 Q. Do you remember where that residence address was?

20 A. That's over on -- I believe it's 702 1-A North
21 McNutt.

22 Q. McNutt. Did you -- did you ever go to that house?

23 A. Yes, sir, I did.

24 Q. House that you knew to be Curtis Flowers' residence.

25 A. Yes, sir.

26 Q. Did you talk with anybody there?

27 A. Yes, sir.

28 Q. Who was present when you went there living in that
29 house?

1 A. Connie.

2 Q. And who went with you, if you recall?

3 A. Jerry Butler went with me.

4 Q. When you and Officer Butler went to the defendant's
5 house that first time, what were you looking for?

6 A. We was looking for tennis shoes.

7 Q. Did -- and how, how did you go? Were you allowed to
8 search the house?

9 A. Yes, sir.

10 Q. Did you find any tennis shoes?

11 A. Found a bunch of tennis shoes but not the brand name
12 we was looking for.

13 Q. Did you see anything that you did make a mental note
14 of but that you did not retrieve?

15 A. I did. I found a shoebox.

16 Q. A shoebox. What kind of shoebox?

17 A. It was a Fila shoebox. It was in the chester
18 drawer.

19 Q. Okay. You saw that yourself.

20 A. Yes, sir.

21 Q. Did you look in it?

22 A. Looked in it.

23 Q. What was in the box?

24 A. Nothing.

25 Q. No Christmas bows or nothing?

26 A. No, sir.

27 Q. Is that correct?

28 A. That's correct.

29 Q. Are you telling us the box was empty?

1 A. It was empty.

2 Q. All right. Did you seize that box?

3 A. Not at that time.

4 Q. After you left without seizing the box, did y'all
5 discuss the importance of the box that you left there?

6 A. We did.

7 Q. And after you -- after you did that, what decision,
8 if any, did you make towards going back there?

9 A. We went back after it several days later.

10 Q. Okay. And when you got back there, did you obtain
11 that shoebox?

12 A. I did.

13 Q. Would you recognize that shoebox if you were to see
14 it again?

15 A. I think I would.

16 Q. Okay. I'm going to hand you what's previously been
17 marked as State's Exhibit 79 identification. I want to ask
18 you to look at this, if you will, please, Sheriff.

19 A. (Complied.)

20 Q. Do you recognize State's 79?

21 A. Yes, sir.

22 Q. Tell us what that is. Tell us what it is and
23 describe it for us, please, for the record.

24 A. It's a shoebox, Fila shoebox. It's probably a foot
25 by 14 inches. And it's a -- it says on the end MS Grant,
26 Grant Hill, Number II, MID. It's a 10 1/2 shoe.

27 Q. Does it say anything on there about what color the
28 shoes are that were originally packaged in that box?

29 A. White and navy and red.

1 Q. Okay. Now, is that the box that you obtained from
2 the defendant's residence when you went there the second time?

3 A. Yes, sir.

4 Q. Is that -- did, did you see your initials on there?

5 A. Yes, sir.

6 Q. And is there a date or anything, date and time or
7 anything like that when y'all recovered that box?

8 A. 14th day of August, 1996, at 2:17 p.m.

9 Q. Okay. Now, I'm not trying to pin you down as to the
10 exact number of days, Sheriff. But can you tell us what
11 August 14 -- how many days was it before then that you first
12 saw the box? And if you will, tell us where it was when you
13 first saw it, where in the house I mean.

14 A. I don't know exactly how many days. I would think
15 it was probably about two weeks later we went back after the
16 shoebox.

17 Q. So you had seen it two weeks before you actually
18 retrieved it.

19 A. Yes, sir.

20 Q. Where was it in the house?

21 A. As you go in the front door, you turn left and go
22 down a hallway. In the back bedroom on the right, as you get
23 to the end of the hall.

24 Q. And where in that back bedroom on the right was the
25 box located?

26 A. There was a chester drawers there, and it was in one
27 of the drawers.

28 Q. What else was in that drawer with the shoebox?

29 A. Not a thing.

1 Q. Nothing?

2 A. Nothing.

3 MR. HILL: Your Honor, pursuant to the
4 sheriff's identification of this box, we ask that State's
5 79-A be received.

6 MR. CARTER: Let me see it one minute.

7 Okay. No objection.

8 THE COURT: Let it be admitted.

9 (THE FILA GRANT HILL II MID SHOEBOX PREVIOUSLY MARKED
10 STATE'S EXHIBIT NUMBER 79-A FOR IDENTIFICATION WAS ADMITTED
11 INTO EVIDENCE.)

12 Q. (By Mr. Hill:) Sheriff, when you went back the
13 second time to get the box, you never did recover the shoes
14 that you were looking for.

15 A. No, sir.

16 MR. HILL: Tender the witness.

17 CROSS-EXAMINATION BY MR. CARTER:

18 Q. Sheriff Thornburg, do you mind stepping down a
19 minute?

20 A. Okay. (Complied.)

21 MR. CARTER: Is it all right, Your Honor?

22 THE COURT: Yes, sir.

23 Q. (By Mr. Carter:) Now, Sheriff, this is Mr.
24 Simpson's car; right?

25 A. Um-hum.

26 Q. Now, what color is this car?

27 A. It's kind of a gold, bronze.

28 Q. Okay. Is it one color?

29 A. Some people might call it brown.

1 Q. How many colors do you see?

2 A. I don't see but one color.

3 Q. Okay. Now, there's a, if you look at this clearly,
4 brown section or gold section or whatever. What is this
5 little glare? Do you know?

6 A. Could be the sunlight. I don't know.

7 Q. Okay. Now, this color, what appears to be a second
8 color, are you telling the jury that this is, this section
9 here, is not a different color to this section up here?

10 A. I don't know. It looks different, but that's the
11 color.

12 Q. Okay. And is this the only time you have seen this
13 car?

14 A. I saw it that day.

15 Q. Okay. And did you make any notes about that car
16 that day?

17 A. No, sir.

18 Q. Now, with respect to what you identified as pry
19 marks here --

20 A. Right.

21 Q. -- you don't have any idea when they got there, do
22 you?

23 A. I sure don't.

24 Q. Don't have any idea who put them there, do you?

25 A. I sure don't.

26 Q. Okay. Thank you.

27 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

28 Q. Now, this box that you got from Miss Moore's house
29 that you admit that you saw on two occasions; is that correct?

1 A. Yes, sir.

2 Q. Now, when you went to Miss Moore's house she allowed
3 you to search. You asked if you could search, and she
4 consented.

5 A. The first time.

6 Q. The first time. And within that search, I take it
7 you searched every room in the house.

8 A. Yes, sir.

9 Q. How many rooms in the house?

10 A. Hmm?

11 Q. Is it apartment, or what would you describe that as?

12 A. It's kind of like an apartment. Yes, sir.

13 Q. How many rooms?

14 A. I think it was three. I'm not sure.

15 Q. How many bedrooms?

16 A. You know, I can't remember how many bedrooms it was.

17 Q. Did you see any children that day?

18 A. The second time I went back, she did have some
19 children there.

20 Q. Okay. Do you remember how many?

21 A. I don't.

22 Q. The first time you didn't see any children.

23 A. I don't remember seeing any.

24 Q. Were there any adults the first time you went there
25 other than Miss Moore?

26 A. I don't remember whether it was any more there or
27 not.

28 Q. Okay. Now, this box -- on the first occasion that
29 you went there, was this box taken from out of the drawer and

1 brought to you, or did you go look into the drawer and see it?

2 A. First time I was there I saw it in the drawer. We
3 was looking for shoes. When I went back the second time, I
4 told Connie I come back after the shoebox that was in the
5 chester drawer. She went back there and got it and brought it
6 out to me.

7 Q. Okay. Now, when you were looking at shoes, where
8 did you see shoes on that first occasion? Were shoes in the
9 drawer also?

10 A. No, sir.

11 Q. Or in a separate place?

12 A. In closets.

13 Q. And your testimony is that you found this box. And
14 was it open?

15 A. No, sir. It had the lid on it.

16 Q. Is it in the same condition now as it was back then,
17 or is it not? Do you know?

18 A. Pretty close. It may not have been as opened up
19 like it is.

20 Q. Okay. Now, what were you -- the day that you went
21 there initially, you were strictly looking for shoes.

22 A. Yes, sir.

23 Q. Or what were you looking for? Can you tell us what
24 you were doing the first time you went there?

25 A. Was looking for Fila tennis shoes.

26 Q. And you found some tennis shoes, but they were not
27 Fila.

28 A. Right.

29 Q. Okay. And something happened. I guess you had a

1 discussion. And you had to go back again.

2 A. Yes, sir.

3 Q. And went back a second time. Who was with you?

4 A. Jerry Butler.

5 Q. Okay. And on the second time you asked Miss Moore
6 to bring you the shoebox.

7 A. Yes, sir.

8 Q. And therefore -- did you go to the room?

9 A. I didn't go back. She went back and got it.

10 Q. Okay. So she went back and got it the second time.
11 So the second time you do not know what was in it; is that
12 correct? You can't say whether she took something out of it
13 or not.

14 A. Wasn't anything in it when I looked in it the first
15 time.

16 Q. But the second time you don't know if there was
17 anything in it or not.

18 A. Right.

19 Q. Okay. Now, did you subsequently or at some point
20 learn that Miss Moore has three children, is that correct, or
21 at least a number of children?

22 A. Yes, sir.

23 Q. Did you learn that she had three, or did you learn
24 she had some children?

25 A. I knew she had two boys that wasn't living with her.

26 Q. Wasn't living with her?

27 A. Right.

28 Q. And how, how did you determine they were not living
29 with her?

1 A. They were living with their daddy.

2 Q. Okay. One of them or both of them?

3 A. Pardon.

4 Q. One, one of the boys was living with their dad or

5 both?

6 A. The day I went over there, both of them was there.

7 Q. Both were at their dad's house?

8 A. Yes, sir.

9 Q. What is their dad's name?

10 A. Vernon Peeples.

11 Q. Yes, sir. And the time that you went to Mr.

12 Peeples' house, was it after you had gone to Miss Moore's

13 house twice or was it before?

14 A. I can't remember whether it was before or after.

15 Q. One moment.

16 When you got to Angelica that day, Doyle Simpson wasn't

17 there but you saw Emmitt Simpson come running by or to

18 Angelica; is that correct?

19 A. He ran by the front office. Yes, sir.

20 Q. Now, tell me about the front office. Is that the --

21 is that an area that is near Church Street?

22 A. Yes.

23 Q. Okay. And it has a smaller section than the larger

24 part of the building, and it has doors there to the -- I guess

25 it would be the south side where you can go in.

26 A. Yes, sir.

27 Q. And you were in that particular room there when you

28 saw him running by.

29 A. Yes, sir.

1 Q. And he ran on by you all down toward the end of
2 Angelica. Is that where he was going?

3 A. Right. I, I come out, got behind him. And he had
4 done got to the other end of the building and turned going
5 back, the back of it.

6 Q. And at a later point you saw Doyle pull up; is that
7 correct?

8 A. Yes, sir.

9 Q. Now, did Doyle pull up by the office part, the same
10 office part you are talking about?

11 A. Yes, sir.

12 Q. Okay.

13 One moment, Your Honor.

14 Now, this bedroom where you saw the shoes, shoebox, whose
15 bedroom was that? Do you know?

16 A. Rephrase that now.

17 Q. The, the, the room that the chester drawer where you
18 found the shoebox contained within, was that a bedroom or --

19 A. It was a bedroom. Yes, sir.

20 Q. Do you know whose bedroom that was?

21 A. I do not.

22 Q. Did you ask Miss Moore if, if there were anymore
23 shoeboxes in the house, or you didn't need to ask because you
24 had searched the entire --

25 A. No, sir.

26 Q. Okay. You didn't ask. Is it your testimony you
27 searched the entire apartment or house when you went there the
28 first time?

29 A. Yes, sir.

1 Q. Did you search the kitchen and garbage cans and all
2 that too?

3 A. Yes, sir.

4 Q. Okay. I couldn't hear your answer a few minutes
5 ago. You said once you got the box, you submitted it to whom?

6 A. It was carried to the crime lab.

7 Q. Okay. One moment.

8 Did you make any kind of written statement about --

9 A. No, sir.

10 Q. -- your visit to the house on either occasion?

11 A. No, sir.

12 Q. Did you make any kind of written statement about
13 Doyle Simpson having reported that his gun was missing?

14 A. No, sir.

15 Q. Sheriff, is there any particular reason you didn't?

16 A. No. No particular reason.

17 Q. One moment. I think I'm finished.

18 Now, did Mr. Johnson or Chief Hargrove or somebody talk
19 with you to get a statement from you and actually memorialize
20 in writing, some manner the nature of what you witnessed on
21 each occasion that you went to Miss Moore's house and to
22 Angelica?

23 A. May have. John may have.

24 Q. Okay. Who to your knowledge was lead investigator
25 on this case?

26 A. Who was what?

27 Q. Was the lead investigator.

28 A. I'd say Wayne Miller and Jack.

29 Q. Jack Matthews.

1 A. Matthews.

2 Q. And you are not sure whether they got a -- whether
3 they questioned you and made a written statement or not about
4 your, your role you played.

5 A. I don't know.

6 MR. CARTER: One moment, Your Honor.

7 We tender, Your Honor.

8 REDIRECT EXAMINATION BY MR. HILL:

9 Q. Sheriff, regardless of whether it was called a --
10 whether you wrote a written statement or not, you did notify
11 the investigators of your findings and what you did; is that
12 not correct?

13 A. Absolutely.

14 Q. Okay. And with regard to Mr. Simpson, Emmitt
15 Simpson, you were questioned about him. Did you follow him on
16 around the building there?

17 A. I did.

18 Q. What was he doing when you got around there?

19 A. He -- I saw him when he got up on the dock and sit
20 down on the loading dock.

21 Q. He worked there, didn't he?

22 A. Yes, sir. They had some kind of little business
23 back there in the back-end of that building where he worked.

24 Q. Kind of a warehouse place or something back there.

25 A. Something. I don't know what the business was.

26 Q. But anyway, he didn't run away from the place.

27 A. No, sir.

28 Q. Okay. So did you satisfy yourself that he didn't --
29 he wasn't involved in anything of any unusual nature at the

1 time? I mean he didn't leave the premises. He ran by the
2 front office and sat down on the dock; is that right?

3 A. Right. He just said he was running. Of course, he
4 was really perspiring. He was wet with sweat. It was July.

5 Q. It was hot out, wasn't it?

6 A. It was hot.

7 Q. Can't run long like that?

8 A. I talked to him a few minutes and asked him if we
9 could search his van. He said have at it. We did and didn't
10 find anything.

11 Q. Okay. You did that just to eliminate him.

12 A. Right. Yes, sir.

13 Q. Thank you, Sheriff.

14 THE COURT: You may step down, Sheriff.

15 Ladies and gentlemen, we are going to take a lunch
16 break. They are catering your food in. And Miss
17 Halfacre, I think, has gone and told them we are ready to
18 eat. We will let you go to the jury room, and they will
19 bring it in there to you.

20 Okay. Court will be in recess.

21 (COURT RECESSED FOR THE NOON HOUR.)

22 (PROCEEDINGS RESUMED IN OPEN COURT. MR. EVANS, MR. HILL,
23 MR. CARTER, MR. DEGREY AND THE DEFENDANT WERE PRESENT.

24 PROCEEDINGS RESUMED AS FOLLOWS:)

25 (THE JURY RETURNED TO THE COURTROOM.)

26 (THE WITNESS ENTERED THE COURTROOM.)

27 THE COURT: You were sworn yesterday, weren't
28 you?

29 THE WITNESS: Yes, sir.

1 THE COURT: State your name for the record,
2 please.

3 THE WITNESS: Jack Matthews.

4 MR. EVANS: May I proceed, Your Honor?

5 JACK MATTHEWS, Called on behalf of the State, having been
6 duly sworn, was examined and testified as follows:

7 DIRECT EXAMINATION BY MR. EVANS:

8 Q. Mr. Matthews, how are you currently employed?

9 A. I'm the director of security at the Greenwood
10 Leflore Hospital.

11 Q. And how long have you been director of security at
12 Greenwood?

13 A. Approximately six-and-a-half years.

14 Q. I want to direct your attention back to July of
15 1996, and I'll ask you how you were employed at that time.

16 A. I was employed as an investigator with Mississippi
17 Highway Safety Patrol.

18 Q. Okay. And how long had you been an investigator?

19 A. At that time, probably nine or ten years.

20 Q. How long had you been in law enforcement?

21 A. Since 1974.

22 Q. Okay. Did you have an occasion to be called to
23 assist in a murder investigation in Montgomery County then?

24 A. Yes, sir, I did.

25 Q. What was the nature of that call?

26 A. I received a call from the Winona Police Department
27 that they had some shooting victims at Tardy Furniture on
28 Front Street in Winona.

29 Q. Okay. And do you know approximately what time you

1 arrived at Tardy Furniture?

2 A. Probably was sometime around 11:00. Maybe just a
3 little bit between 11:00 and 11:15.

4 Q. All right. Were -- was there any other investigator
5 with the Mississippi Highway Patrol also sent to Winona?

6 A. Right. Lieutenant H.W. Miller arrived a short time
7 after I did.

8 Q. Okay. Mr. Matthews, what did you find when you got
9 to the scene?

10 A. Well, I was met at the scene by the Winona Police
11 Chief, Chief Hargrove. And he stated that there were some --
12 there were three, three bodies still in the furniture store in
13 Tardy Furniture and that he had been called to the scene a
14 short time before he notified me or he notified the police
15 department to, to call the patrol investigators.

16 Q. Okay.

17 A. He just stated that he had been -- came to the scene
18 there, and he had pretty much secured the scene since he had
19 been there.

20 Q. Okay. At that point did you see -- when you went
21 in, did you see any types of what you would consider physical
22 evidence in the scene?

23 A. Yes, sir. There was some bloody footprints there on
24 the floor. Observed some spent hulls, one live round laying
25 there at the scene. The three victims were still there when I
26 arrived.

27 Q. And you had been advised that the other victim had
28 been removed.

29 A. Right. Chief Hargrove told me that the ambulance

1 service had taken one of the victims to the hospital.

2 Q. All right. As far as the physical evidence that you
3 have described - the bloody foot or shoe prints, the
4 projectiles, hulls, things like that - was it your -- part of
5 your responsibility to take those into custody at that time or
6 was someone else assigned that?

7 A. We had already notified the crime lab to come to the
8 scene, and I knew that they were on their way.

9 Q. Okay. And did they, in fact, send someone to work
10 the crime scene?

11 A. Yes, they did.

12 Q. Do you know who was in charge of that crime scene
13 unit?

14 A. I believe it was Melissa Schoene.

15 Q. Did you also look around in the store to see if you
16 could find anything that might be important?

17 A. Yes, we did.

18 Q. All right. Did you, in fact, find some documents
19 that you took into custody?

20 A. Yes, sir.

21 MR. EVANS: Your Honor, I have Exhibits S-43,
22 S-44 and S-42 that I would move into evidence at this
23 time.

24 THE COURT: Any objection?

25 MR. CARTER: None.

26 (THE YELLOW DAILY CHECK-UP SHEET PREVIOUSLY MARKED
27 STATE'S EXHIBIT NUMBER 42 FOR IDENTIFICATION WAS ADMITTED INTO
28 EVIDENCE.)

29 (CURTIS FLOWERS' TIME CARD PREVIOUSLY MARKED STATE'S

1 EXHIBIT NUMBER 43 FOR IDENTIFICATION WAS ADMITTED INTO
2 EVIDENCE.)

3 (A CHECK MADE PAYABLE TO CURTIS FLOWERS PREVIOUSLY MARKED
4 STATE'S EXHIBIT NUMBER 44 FOR IDENTIFICATION WAS ADMITTED INTO
5 EVIDENCE.)

6 Q. (By Mr. Evans:) Mr. Matthews, I'll now hand you
7 Exhibits 42, 43 and 44 and ask you if you can identify what
8 those are.

9 A. This was a daily cash sales that they kept up with
10 for the date July 15.

11 Q. Okay.

12 A. These two items, I found these on Bertha Tardy's
13 desk in the back of the store - the check and the index card.

14 Q. Okay. And who's the check made payable to?

15 A. It's made payable to Curtis Flowers.

16 Q. In what amount of money?

17 A. \$82.58.

18 Q. And the next exhibit, I believe 44, what is it?

19 A. This appears to be a index card with the times that
20 Curtis Flowers worked at Tardy Furniture.

21 Q. And what does that show that he worked?

22 A. Looks like a total of 17 hours and 55 minutes. That
23 was June 29, of '96. There looks like he worked approximately
24 8 hours and 20 minutes.

25 Q. Okay. I want to show you Exhibit 44-A. It's upside
26 down; 42-A, I believe; and 43-A and ask if these are
27 enlargements of the same exhibits that you have just testified
28 to.

29 A. Yes, sir.

1 MR. EVANS: Your Honor, I offer these into
2 evidence at this time.

3 THE COURT: Any objection?

4 MR. CARTER: No objection.

5 THE COURT: Let them be admitted.

6 (THE BLOW-UP OF STATE'S EXHIBIT NUMBER 42 PREVIOUSLY
7 MARKED STATE'S EXHIBIT NUMBER 42-A FOR IDENTIFICATION WAS
8 ADMITTED INTO EVIDENCE.)

9 (THE BLOW-UP OF STATE'S EXHIBIT NUMBER 43 PREVIOUSLY
10 MARKED STATE'S EXHIBIT NUMBER 43-A FOR IDENTIFICATION WAS
11 ADMITTED INTO EVIDENCE.)

12 (THE BLOW-UP OF STATE'S EXHIBIT NUMBER 44 PREVIOUSLY
13 MARKED STATE'S EXHIBIT NUMBER 44-A FOR IDENTIFICATION WAS
14 ADMITTED INTO EVIDENCE.)

15 MR. EVANS: One moment, Your Honor.

16 May I have the witness step down?

17 (THE WITNESS STEPPED DOWN FROM THE WITNESS STAND.)

18 Q. (By Mr. Evans:) Officer Matthews, if you would,
19 take this laser pointer and just point out to the ladies and
20 gentlemen what this document 43-A is.

21 A. Okay. This is a check made out to Curtis Flowers
22 for 40 -- for, correction, \$82.58.

23 Q. And where did you find this check?

24 A. I found this laying on Miss Tardy's desk at Tardy
25 Furniture Company.

26 Q. All right. Excuse me just a minute.

27 Exhibit 42-A, can you tell us what this is and where you
28 found it?

29 A. This is apparently something they have made up,

1 daily deposits and business transactions that they do for the
2 day, a tally sheet. And I found this laying on the desk at
3 Tardy Furniture Company.

4 Q. And what does it show that the total amount is?

5 A. \$300.

6 Q. Exhibit 43-A, what is this? And where did you find
7 it?

8 A. Okay. This was an index card that was laying on
9 Miss Tardy's desk beside the check that you saw earlier. And
10 it looks like it's a card where she kept up with the times
11 that Curtis Flowers worked at Tardy Furniture Company.

12 Q. Does it, in fact, show dates and times?

13 A. Yes, it does.

14 Q. All right. Thank you. You can just have a seat
15 again, please, for a minute.

16 A. (Complied.)

17 Q. I want to skip around in time just a minute. I will
18 come back to that day in a minute. Did you have an occasion
19 to go back to Tardy Furniture at a later date and attempt to
20 recover some further evidence?

21 A. Yes, sir, we did.

22 Q. When was that?

23 A. I believe it was August 13. We had looked at some
24 autopsy reports and realized that the -- one of the gunshot
25 wounds had passed through Mrs. Tardy's head was an entrance
26 and exit. And we had seen a spot on one of the columns near
27 where her body was located. And we thought possibly if we
28 went back and checked into that area that we may could find
29 that projectile.

1 Q. Who went back to the store to check for that
2 projectile?

3 A. Myself. Officer Miller. John Johnson.

4 Q. And John Johnson is an investigator that is working
5 with the district attorney's office.

6 A. That's correct.

7 Q. Okay. Had the scene been secured from the time that
8 the crime had occurred?

9 A. Yes, sir, it had.

10 Q. Did y'all look at the area where you had seen the
11 defect on a column in the store close to where Mrs. Tardy was
12 laying?

13 A. Yes, sir.

14 Q. After looking at that defect in the column, were
15 y'all able to observe anything?

16 A. Well, we, we realized that the angle of where Mrs.
17 Tardy -- the entrance and exit wound she had was in line with
18 that column. And we saw the indentation on the column and, and
19 felt like, you know, possibly we could locate that projectile.

20 Q. And did you look to attempt to recover that
21 projectile?

22 A. Yes, sir. We found it in a mattress.

23 Q. Where was that mattress located?

24 A. It was located near that area in the store where the
25 indentation had been made on the column.

26 Q. Was that projectile, in fact, recovered?

27 A. Yes, sir, it was.

28 Q. And what was done with that projectile?

29 A. We submitted it into evidence to the crime lab.

1 MR. EVANS: Your Honor, at this time I would
2 offer Exhibits 45, 47, 95-A, 96-A, 97-A into evidence
3 along with 98-B.

4 MR. CARTER: No objection.

5 THE COURT: Okay. Let them be admitted.

6 (THE SMALL BLACK AND WHITE PHOTOGRAPH OF THE FOOTWEAR
7 IMPRESSIONS PREVIOUSLY MARKED STATE'S EXHIBIT NUMBER 45 FOR
8 IDENTIFICATION WAS ADMITTED INTO EVIDENCE.)

9 (A BLACK AND WHITE PHOTOGRAPH OF FOOTWEAR IMPRESSIONS
10 PREVIOUSLY MARKED STATE'S EXHIBIT NUMBER 47 FOR IDENTIFICATION
11 WAS ADMITTED INTO EVIDENCE.)

12 (THE BLOW-UP OF STATE'S EXHIBIT NUMBER 95, CONTAINING
13 FIVE PHOTOGRAPHS, PREVIOUSLY MARKED STATE'S EXHIBIT NUMBER
14 95-A FOR IDENTIFICATION WAS ADMITTED INTO EVIDENCE.)

15 (THE BLOW-UP OF THE PHOTOGRAPH CUTTING OPEN A MATTRESS
16 PREVIOUSLY MARKED STATE'S EXHIBIT NUMBER 96-A FOR
17 IDENTIFICATION WAS ADMITTED INTO EVIDENCE.)

18 (THE BLOW-UP OF STATE'S EXHIBIT NUMBER 97, ON A BOARD
19 CONTAINING FIVE PHOTOGRAPHS, PREVIOUSLY MARKED STATE'S EXHIBIT
20 NUMBER 97-A FOR IDENTIFICATION WAS ADMITTED INTO EVIDENCE.)

21 (AN ENLARGEMENT OF A PHOTOGRAPH SHOWING A PROJECTILE
22 RECOVERED FROM THE MATTRESS PREVIOUSLY MARKED STATE'S EXHIBIT
23 NUMBER 98-B FOR IDENTIFICATION WAS ADMITTED INTO EVIDENCE.)

24 MR. EVANS: Your Honor, may I have the witness
25 step down again?

26 THE COURT: Um-hum.

27 (THE WITNESS STEPPED DOWN FROM THE WITNESS STAND.)

28 Q. (By Mr. Evans:) Mr. Matthews, do you see the defect
29 in the post that y'all went back to check?

1 A. Okay. It is just above the yardstick.

2 Q. Was that something that y'all had seen on the date
3 of the murders?

4 A. Yes, sir. We had noticed it and seen it in some of
5 the photographs that they had taken.

6 Q. All right. And you say after you determined that
7 one of the projectiles had not been recovered y'all went back.

8 A. Right.

9 Q. Where did you find the -- show at first from this
10 photograph 95-A. Can you show us in relationship to this
11 where you found, actually found the projectile?

12 A. I believe it was right in this area. (Indicated.)

13 Q. I see a pen looks like stuck in.

14 A. Right. We used that for a reference point there
15 when we were taking these photographs.

16 Q. Was that a hole you found in the plastic?

17 A. Hole we found in the plastic.

18 Q. Once you found the defect and the hole in the
19 plastic, what was done next?

20 A. Well, we, of course, cut the plastic and, and
21 probed, you know, lightly in there to make sure to see if we
22 could find it.

23 Q. Okay.

24 A. And this photograph shows where the projectile was
25 located.

26 Q. All right. And that is exactly where it was
27 recovered.

28 A. Yes, sir.

29 Q. And I believe 98-B is just an enlargement, actually

1 showing the same photograph that is on here, showing that that
2 projectile was recovered from the mattress.

3 A. Yes, sir.

4 Q. And this is the projectile that went through which
5 victim?

6 A. Bertha Tardy.

7 Q. Thank you. You can have a seat again.

8 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

9 What was -- well, let me go a different direction first.
10 Did you have an occasion to go to a location and attempt to
11 find bullets that had been fired from Doyle Simpson's gun?

12 A. Yes, sir, I did.

13 Q. Where did you go, and who did you go with?

14 A. Went out on to Doyle Simpson's mother's residence
15 out on Poorhouse Road.

16 Q. And what was the reason that y'all wanted to find
17 projectiles that had been fired from that weapon?

18 A. Well, on the morning that -- of the murders at Tardy
19 Furniture Company, we also got information that a gun had been
20 taken from Doyle Simpson down at Angelica, a manufacturing
21 company.

22 And after we questioned him to find out if he had ever
23 fired that gun anywhere, he told us that he had shot it out
24 there at his mother's residence at some bottles and some cans
25 and into a post that was out there at that location.

26 Q. All right. And what was the significance of being
27 able to find projectiles that you knew that had been fired
28 from his weapon?

29 A. Well, we wanted to test -- we wanted to check them

1 and compare them against the projectiles that we had at the
2 scene.

3 Q. For what purpose?

4 A. To see if they matched.

5 Q. To see if that gun had been used at the store.

6 A. Correct.

7 Q. On July 16, 1996, the day of these murders, did you
8 have an occasion to talk to the defendant, Curtis Flowers?

9 A. Yes, I did.

10 Q. Who was present on that day when you talked to him?

11 A. I believe it was myself and Investigator John
12 Johnson.

13 Q. On that day did you advise him of what is normally
14 called his Miranda rights?

15 A. Yes, I did.

16 Q. Did you use a typed form to do that?

17 A. Yes, sir.

18 Q. I show you Exhibit 109 and ask if you can identify
19 what that exhibit is.

20 A. This is a warning and a waiver of rights form.

21 Q. Is that the warning and waiver of rights form that
22 you used to identify the defendant of his rights that day?

23 A. Yes, sir, it is.

24 MR. EVANS: Your Honor, I offer this exhibit
25 into evidence.

26 MR. CARTER: No objection.

27 THE COURT: Let it admitted.

28 MR. EVANS: If you would, hand it to the court
29 reporter.

1 (THE RIGHTS WAIVER FORM DATED JULY 16, 1996, PREVIOUSLY
2 MARKED STATE'S EXHIBIT NUMBER 109 FOR IDENTIFICATION, WAS
3 ADMITTED INTO EVIDENCE.)

4 Q. (By Mr. Evans:) Before I get ahead of myself, I
5 want to show you Exhibit 80 and ask if you can identify what
6 this is.

7 A. This is a projectile that we recovered from the
8 mattress at Tardy Furniture Company.

9 Q. The same projectile that you have shown the jury in
10 these photographs.

11 A. Yes, sir.

12 MR. EVANS: Your Honor, I offer this exhibit
13 into evidence.

14 MR. CARTER: No objection.

15 THE COURT: Let it be admitted.

16 (THE PROJECTILE RECOVERED FROM THE MATTRESS, PREVIOUSLY
17 MARKED STATE'S EXHIBIT NUMBER 80 FOR IDENTIFICATION, WAS
18 ADMITTED INTO EVIDENCE.)

19 Q. (By Mr. Evans:) Officer Matthews, Exhibit 80 that
20 has been identified as the projectile that you recovered from
21 the mattress, what did you do with it?

22 A. I took it to the crime lab.

23 Q. All right. For the purposes that you have already
24 told the jury.

25 A. Yes, sir.

26 Q. Also, I want to show you Exhibit 36 and ask if you
27 can identify this.

28 A. That's a bank bag that we also found the day we were
29 down there picking up the -- getting the projectile.

1 Q. Where was that bank bag recovered?

2 A. It was on a table on the other side of the desk,
3 under some, some papers.

4 MR. EVANS: Your Honor, I offer this exhibit
5 into evidence also.

6 MR. CARTER: No objection.

7 THE COURT: Let it be admitted.

8 (THE GRAY MONEY BAG WITH THE RECEIPT BOOK PREVIOUSLY
9 MARKED STATE'S EXHIBIT NUMBER 36 FOR IDENTIFICATION WAS
10 ADMITTED INTO EVIDENCE.)

11 Q. (By Mr. Evans:) Mr. Matthews, back to the 16th,
12 after you advised the defendant of the rights that you have
13 already testified about, did he, in fact, talk with you?

14 A. Yes, he did.

15 Q. What did he tell you on that day?

16 A. Well, we had already had information that he had
17 been a previous employer -- employee of Tardy Furniture
18 Company, and we wanted to talk to him about that. We asked
19 him about his whereabouts that morning and about the time that
20 he was employed at, at Tardy and reasons that he was not
21 employed at Tardy now.

22 Q. What reasons did he say he was no longer employed at
23 Tardy?

24 A. Well, he told us that he did not show back up for
25 work. He worked from the 29th to -- from June 29 to July 3.
26 He got off at noon that day, and he didn't come back to work
27 after that time.

28 Q. Okay. Did he tell you anything about any batteries?

29 A. Yes, sir, he did.

1 Q. What did he tell you about that?

2 A. He said on the morning of July 3 that he was sent to
3 the Coast to Coast Hardware store to pick up, I believe, six
4 batteries for a golf cart. And when he loaded those on the
5 truck, as he was pulling off, three of the batteries fell off
6 to the ground and they broke. And that --

7 Q. What -- go ahead. What else did he tell you about
8 the battery deal?

9 A. Well, he told us that he took them back around to
10 the store and told Miss Tardy about it. And she instructed
11 him to take them back to Coast -- or they called Coast to
12 Coast. And the employee there told them to bring them back
13 around there and let him look at them to see if they could
14 give them some kind of credit on them.

15 She told him then that if they could not make the
16 batteries good, then it was his responsibility, because he
17 should have tied them down on the truck.

18 Q. Okay. Did he tell you whether or not Mrs. Tardy had
19 let him go, whether she had fired him?

20 A. No, she had not fired him.

21 Q. What did he tell you about his whereabouts? And I'm
22 talking about on the 16th when you talked to him. What did he
23 tell you about his whereabouts on that day?

24 A. Okay. He said that he got up some time around 6:30
25 that morning and that he was babysitting his girlfriend's two
26 children. I believe one was 11, and the other was either two
27 or three. And that he fixed them breakfast around 9:00 that
28 morning.

29 And after he fixed breakfast for them, about 15 minutes

1 later, he went to his sister's house who lives on Dennis
2 Street. He stayed over there for about 15 minutes, and then
3 he came back. And then about 10:30 that morning, he went to
4 Jeff's Stop-n-Go on Highway 51.

5 Q. Did he tell you that he went anywhere else that
6 morning?

7 A. No, sir. That's all the places he told us he went
8 that day.

9 Q. Did you specifically ask him anything about whether
10 or not he had been on the east side of Highway 51?

11 A. Yes, sir, I did ask him that.

12 Q. What was his response?

13 A. No.

14 Q. Nowhere?

15 A. That he had not been on the east side.

16 Q. Did you notice anything about his physical
17 appearance at that time?

18 A. Well, he did have some, I believe, scratches on his
19 left arm near his elbow. They were some real faint marks
20 there on his elbow, and we did make a note of that.

21 Q. All right. At the time you talked to him on the
22 16th, had you already seen the bloody shoe prints?

23 A. Yes, sir.

24 Q. Did -- because of that, did you observe anything
25 about his shoes?

26 A. Yes, sir. I did look at the bottom of his shoes as
27 we were talking with him.

28 Q. All right. Were the shoes that he had on at that
29 time similar to the ones that had left the bloody shoe track?

1 A. No, sir.

2 Q. What size shoes was he wearing?

3 A. Those were 10 1/2.

4 Q. Did you recover those shoes?

5 A. I didn't that day, but I did at a later date.

6 Q. Okay. I believe they were sent to the crime lab
7 also.

8 A. Yes, sir.

9 Q. And how did you make a determination that they were
10 size 10 1/2?

11 A. I asked him what size they were.

12 Q. Did you have an occasion on the 16th to take a
13 gunshot residue test?

14 A. Yes, sir, I did.

15 Q. What is a gunshot residue test?

16 A. Well, it's a test that is, is used to determine
17 whether somebody has fired a weapon or not.

18 Q. All right. Now, does the -- as a general rule, does
19 the officer taking the test make the determination, or does
20 that officer just follow a procedure for collecting evidence?

21 A. We just follow procedure for collecting evidence and
22 send it to the crime lab.

23 Q. And the crime lab is the one that has to make that
24 determination.

25 A. Yes, sir.

26 Q. I want to hand you Exhibit 94 and ask if you can
27 identify this.

28 A. That's a gunshot residue case that, that I used on
29 Curtis Flowers.

1 Q. Is that the same gunshot residue test that you used
2 on July 16, 1996, to see if there was any gunshot residue on
3 Curtis Flowers' hands?

4 A. Yes, sir.

5 MR. EVANS: I offer it into evidence, Your
6 Honor.

7 MR. CARTER: No objection.

8 THE COURT: Let it be admitted.

9 (THE GUNSHOT RESIDUE KIT PREVIOUSLY MARKED STATE'S
10 EXHIBIT NUMBER 94 FOR IDENTIFICATION WAS ADMITTED INTO
11 EVIDENCE.)

12 Q. (By Mr. Evans:) Officer Matthews, if you would,
13 tell the ladies and gentlemen of the jury basically what steps
14 you take to take a gunshot residue test.

15 A. Okay. There are four vials in there. And, and on a
16 handgun, of course, when you hold the gun in your hand, you
17 want to swab the area on the outside of your hand. And then,
18 of course, you want to swab the area of your palms and right
19 in here where you grip the -- where you grip the weapon.

20 There are four vials in there. And they are labeled
21 right back, right palm, left back and left palm. They have
22 little tabs on them, and you pull those tabs off. You take
23 them and just all along this area up here where you would
24 expect gunshot residue to be, right on the backs of your hand.
25 Whether you are right-handed or left-handed, you do both of
26 them.

27 And you seal those back up in little canisters that they
28 come in, and that's how they determine -- that's what they use
29 to see if there was any gunshot residue left on an

1 individual's hands.

2 Q. And did you, in fact, do that on this case?

3 A. Yes, sir, I did.

4 Q. Now, before you take that test, what precautions do
5 you use to make sure that you yourself don't contaminate
6 anything?

7 A. Okay. Well, it has an instruction sheet in there
8 which goes step-by-step exactly how you do it. And whoever is
9 doing it, myself in this case, you wash your hands and/or you
10 use rubber gloves. And in this case, I washed my hands and I
11 obtained some rubber gloves before I took the sample.

12 Q. Okay. Just to make sure that that area was clean.

13 A. Right.

14 Q. Were you able to make a determination of whether or
15 not the defendant was right- or left-handed?

16 A. I believe I asked him on that form. I believe it's
17 a questionnaire on that form that asks you whether the
18 individual is right or left-handed.

19 Q. If you would, look in that package. I believe that
20 form is actually still in there.

21 A. Yes, sir. It says -- asks the subject is and, of
22 course, is right-handed or left-handed. I have right-handed
23 marked.

24 Q. So he was right-handed.

25 A. Yes, sir.

26 Q. Approximately how many times before that had you
27 taken gunshot residue tests?

28 A. Probably less than ten, more than five.

29 Q. If a person were right-handed, which hand would you

1 come closer to suspecting that there might be evidence on?

2 A. Well, you would suspect the right hand.

3 Q. I am going to show you Exhibit 125 and ask if you
4 can identify what these are.

5 A. These are some Nike Flight tennis shoes we got on
6 July 23.

7 Q. Okay. Is that the same shoes that he had on the
8 first time that you saw him?

9 A. Yes, sir, I believe it is.

10 Q. And what time on the 16th did you see him?

11 A. It was probably -- the first -- sometime after 1:00
12 that day, the first time I saw him.

13 Q. So at least three hours after the crime had been
14 reported.

15 A. Yes, sir.

16 Q. I'd like for you to look in, I think this is the
17 left shoe, and tell us what size it shows that those shoes
18 are.

19 A. That says 10.5.

20 Q. Would you look on the gunshot residue kit and see if
21 you can determine approximately what time you took it?

22 A. I have marked on the kit at 1400 hours, which would
23 be 2:00 p.m.

24 Q. So it was at least four hours from the time of crime
25 before you took the gunshot residue kit.

26 A. Some time between three-and-a-half and four.

27 Q. Okay. Did you have an occasion to talk with the,
28 the defendant again?

29 A. Yes, sir, I did.

1 Q. And did you, in fact, advise him again of his
2 Miranda Rights?

3 A. Yes, sir, I did.

4 Q. Did he sign those rights?

5 A. Yes, sir.

6 Q. And did he, in fact, make another statement to you?

7 A. Yes, sir, he, did.

8 Q. I will hand you Exhibits 110 and 111, ask if you can
9 identify these.

10 A. This is a warning and a waiver of rights.

11 Q. What number is that?

12 A. It's S-110.

13 Q. Okay. Is that the same waiver of rights and warning
14 that you advised him of?

15 A. Yes, sir, it is.

16 Q. All right.

17 A. And the date was 18 July.

18 Q. Okay.

19 A. '96. This is S-111, and this is the statement that
20 we took on that day.

21 Q. And is that a transcript of that statement as close
22 as it could be typed up?

23 A. Yes, sir. Appears to be.

24 Q. All right. The --

25 Your Honor, I offer both these into evidence.

26 MR. CARTER: No objection.

27 THE COURT: Let them be admitted.

28 (THE RIGHTS WAIVER FORM DATED JULY 18, 1996, PREVIOUSLY
29 MARKED STATE'S EXHIBIT NUMBER 110 FOR IDENTIFICATION WAS

1 ADMITTED INTO EVIDENCE.)

2 (THE TRANSCRIPT OF THE TAPED STATEMENT OF THE DEFENDANT
3 PREVIOUSLY MARKED STATE'S EXHIBIT NUMBER 111 FOR
4 IDENTIFICATION WAS ADMITTED INTO EVIDENCE.)

5 Q. (By Mr. Evans:) I hand you back Exhibits 110 and
6 111. Before you took that statement, did you make sure that
7 the defendant understood his rights?

8 A. Yes, sir, I did.

9 Q. And did he, in fact, give you the statement that you
10 have just marked?

11 A. Yes, sir.

12 Q. Was it a free and voluntary statement?

13 A. Yes, sir.

14 Q. Would you read the statement he gave you to the
15 jury? And I know it's going to be kind of lengthy, but...

16 A. (Complied.)

17 (THE TRANSCRIPT OF THE TAPED STATEMENT OF THE DEFENDANT
18 PREVIOUSLY MARKED STATE'S EXHIBIT NUMBER 111 AND ADMITTED INTO
19 EVIDENCE WAS READ TO THE JURY BY THE WITNESS. DIRECT
20 EXAMINATION BY MR. EVANS CONTINUED AS FOLLOWS:)

21 Q. (By Mr. Evans:) So you took two different
22 statements from the defendant.

23 A. Yes, sir.

24 Q. Were there discrepancies in the times he gave you
25 from the first statement and the second statement?

26 A. Yes, sir, there were.

27 Q. Tell the ladies and gentlemen of the jury a little
28 bit about what those discrepancies were.

29 A. When we talked to him on the 16th, he told us that

1 he had gotten up about 6:30 that morning, at the same time
2 that his girlfriend had gotten up to go to work.

3 Q. And in the taped statement, what time does he tell
4 you he got up?

5 A. He tells us he got up at 9:30, something-to-ten.

6 Q. We are talking about the same day?

7 A. Same day. Yes, sir. And then he told us that he
8 went to, to Jeff's store there on 51 at -- told us he went
9 there on the 16th. Told us he went there about 10:30 that
10 morning. And on the statement we took from him on the 18th,
11 he says that he went there sometime between 12:30, 12:45.

12 Q. Would you consider those some pretty major
13 discrepancies?

14 A. Yes, sir.

15 Q. And he admits to you that he had been let go --

16 A. Yes, sir.

17 Q. -- at the store. And did you have an occasion to
18 help get a blow-up of a map of the city of Winona?

19 A. Yes, sir, I have looked at it.

20 MR. EVANS: Your Honor, I offer 108 into
21 evidence. I believe we have already introduced a smaller
22 version of this.

23 MR. CARTER: No objection.

24 THE COURT: Let it be admitted.

25 (A LARGE MAP OF THE CITY OF WINONA PREVIOUSLY MARKED
26 STATE'S EXHIBIT NUMBER 108 FOR IDENTIFICATION WAS ADMITTED
27 INTO EVIDENCE.)

28 MR. EVANS: May I have the witness step down
29 again, Your Honor?

1 (THE WITNESS STEPPED DOWN FROM THE WITNESS STAND.)

2 Q. (By Mr. Evans:) First, can you tell the ladies and
3 gentlemen of the jury what this is?

4 A. This is a map, may be a partial map of the city of
5 Winona.

6 Q. Can you show us where Highway 51 is?

7 A. Right here. (Indicated.)

8 Q. I notice that there is a red line drawn. Is that
9 red line on Highway 51?

10 A. Yes, sir. Pretty much so.

11 Q. Can you point out approximately where the defendant
12 was living at that time and what house he has been talking
13 about?

14 A. Can I get on that side? It is upside down.

15 Q. Sure. Let me swap with you.

16 You may need to step back so that everybody can see.

17 A. Okay.

18 Q. What is the name of that street?

19 A. McNutt.

20 Q. What side, east or west, of Highway 51 is it
21 located?

22 A. It's on the west side.

23 Q. Are you familiar with what side of Highway 51 his
24 sister's house is located that he talks about?

25 A. It's on the west side also.

26 Q. At any time, in any statement that he has given you,
27 has he ever put his self on the east side of Highway 51 at any
28 time that day?

29 A. No, sir.

1 Q. Did you talk to people that put him on the east side
2 of 51 that day?

3 A. Yes, sir, I did.

4 Q. Can you show us a few of those locations?

5 A. Okay. Okay. This is -- Angelica Manufacturing was
6 right in this location here. And Catherine Snow saw him in
7 this area right here.

8 Q. Is what -- is that on the east side of 51?

9 A. Yes, sir, it is.

10 Q. Do you see a location about where a person named
11 Edward Kennedy or Bo Jack lives?

12 A. Okay. That would be on Academy Street.

13 Q. Bo Jack.

14 A. No. Bo Jack was, was right here. Right there at 51
15 and, and it's called Dunniger on the map. But it's, I think,
16 Angelica Drive.

17 Q. All right.

18 A. It is right in that area right there.

19 Q. And which side of 51 is that located?

20 A. It's on the east side also.

21 Q. Where is Tardy Furniture located on that map?

22 A. (Indicated.)

23 Q. All right. You were pointing to the approximate
24 area where Tardy Furniture is located.

25 A. That's correct.

26 Q. And what street is it located on?

27 A. It's located on the corner of Front Street and
28 Carrollton.

29 Q. Front and Carrollton.

1 A. Front of it faces Front Street.

2 Q. Are you familiar with the area where Clemmie Fleming
3 saw him that morning?

4 A. Yes, sir. Right down here on Carrollton, just
5 behind the store.

6 Q. Is that on the east or west side of 51?

7 A. That is on the east side.

8 Q. Are you familiar -- well, at this point I'm not
9 going to go into all of them, but are you familiar with other
10 locations on the east side where he was identified by people
11 on that day?

12 A. Yes, sir.

13 Q. You can take your seat again.

14 A. (Complied.)

15 Q. Did you have an occasion while you were in the store
16 to examine a cash drawer?

17 A. Yes, sir, I did.

18 Q. What did you observe about that cash drawer?

19 A. Well, there was some change still in the cash
20 drawer, but all the currency was missing.

21 Q. Was there a fairly extensive search of the building
22 conducted?

23 A. Yes, sir.

24 Q. Was there anything other than the change, as far as
25 money, ever found anywhere in the store?

26 A. No, sir.

27 Q. Now, the daily total, what did it show that the
28 daily total at the store should have been at that time?

29 A. Should have been about -- approximately \$300.

1 Q. Did you have an occasion to go to the defendant's
2 house at any time?

3 A. Yes, sir, I did.

4 Q. When was that?

5 A. I don't remember the exact day. May have been --
6 may have been the 23rd, but I'm not positive.

7 Q. Was there a search of the house at that time?

8 A. Yes, sir, it was.

9 Q. Was any money found in the house?

10 A. Yes, sir.

11 Q. Where was it found?

12 A. It was found in the -- there was a headboard at the
13 bed in the bedroom. In that headboard was approximately \$235
14 found there.

15 MR. EVANS: Your Honor, I offer 34 and 35 into
16 evidence.

17 MR. CARTER: No objection.

18 THE COURT: Okay.

19 (A SMALL PHOTOGRAPH OF A GRAY BANK BAG PREVIOUSLY MARKED
20 STATE'S EXHIBIT NUMBER 34 FOR IDENTIFICATION WAS ADMITTED INTO
21 EVIDENCE.)

22 (A SMALL PHOTOGRAPH OF A GRAY BANK BAG PREVIOUSLY MARKED
23 STATE'S EXHIBIT NUMBER 35 FOR IDENTIFICATION WAS ADMITTED INTO
24 EVIDENCE.)

25 Q. (By Mr. Evans:) I'll show you Exhibits 34 and 35
26 and ask if you can identify what those are.

27 A. Okay. That is the money bag that we found. I
28 believe it was on August 13.

29 Q. Is that the same money bag that has already been

1 identified and placed into evidence?

2 A. Yes, sir.

3 Q. Was there any cash in that money bag?

4 A. No, sir.

5 MR. EVANS: One second, Your Honor.

6 Your Honor, I'll tender the witness.

7 CROSS-EXAMINATION BY MR. CARTER:

8 Q. Mr. Matthews, you ever worked at Tardy's?

9 A. No, sir.

10 Q. So isn't it a fact that you have no personal
11 knowledge that that check you saw was written by Miss Tardy?

12 A. Well, I don't have any personal knowledge, but it
13 was signed.

14 Q. Are you a handwriting expert?

15 A. No, but I asked her daughter if that was hers.

16 Q. So somebody told you that was hers.

17 A. Yes.

18 Q. And as to the, the time card, that is also based on
19 somebody telling you; is that correct?

20 A. Yes, sir. And the testimony that, that the
21 defendant gave us when we were interviewing him.

22 Q. Okay.

23 A. Of the times that he worked.

24 Q. Also, as to the amount of money that was there,
25 should have been there, that is based on somebody telling you
26 that as well; is that correct?

27 A. (No response.)

28 Q. As to that \$300 you testified about. Do you have
29 any idea what amount of money is usually in the store when it

1 opens in the morning?

2 A. Well, I -- just in talking to Miss Tardy's daughter.
3 She told me that approximately that is what should have been
4 there.

5 Q. Okay. But you have no personal knowledge.

6 A. No, sir.

7 Q. Now, based on everything you have said so far, is it
8 fair to say that Mr. Flowers didn't say anything or do
9 anything to show that he had any personal hatred or enmity or
10 disagreement with Miss Tardy?

11 A. Told us that he didn't.

12 Q. Okay. Now, how long were you at the crime scene
13 before the crime lab people from Jackson got there with Miss
14 Schoene?

15 A. I don't know exactly what time she arrived, but it
16 was probably some time, you know, after around 12-noon.
17 Somewhere in that.

18 Q. Who was in charge of the situation before she got
19 there?

20 A. The police chief and myself were there, and Officer
21 Miller.

22 Q. Okay. Is your rank or were your rank at the time
23 higher than Mr. Miller's?

24 A. No.

25 Q. Okay. Nevertheless, you were partially in charge
26 instead of him.

27 A. Well, I was there just a little bit ahead of him,
28 but he arrived a short time later.

29 Q. Did you make any notes --

1 A. Yes, sir.

2 Q. -- while you were there?

3 A. Yes, sir.

4 MR. CARTER: May I have this marked for
5 identification, Your Honor?

6 THE COURT: (Nodded.)

7 (A SHEET OF PAPER WITH HANDWRITTEN NOTES ON IT WAS MARKED
8 DEFENDANT'S EXHIBIT NUMBER 4 FOR IDENTIFICATION.)

9 MR. CARTER: May I approach the witness, Your
10 Honor?

11 THE COURT: Um-hum.

12 Q. (By Mr. Carter:) Do you recognize -- can you
13 identify that? I don't know if it is your's or somebody
14 else's.

15 A. It's not mine.

16 Q. It's not your notes?

17 A. No, sir.

18 Q. Do you recognize the writing?

19 A. No.

20 Q. Do you have your notes?

21 A. No, sir.

22 Q. Were you told not to bring them?

23 A. No, sir. No, sir.

24 Q. Did you also make a trip out to where Doyle's car
25 was located, Doyle Simpson's car was located?

26 A. Yes, sir.

27 Q. Did you take any pictures?

28 A. I don't believe I did, no.

29 Q. What color was the car? Do you remember?

- 1 A. It was kind of a beige, light brown.
- 2 Q. Was it solid or two colors?
- 3 A. I believe it was solid, but I couldn't say for sure.
- 4 Q. If you saw a picture of it, would you recognize it?
- 5 A. Probably so.
- 6 Q. Is this the car at the top right?
- 7 A. (No response.)
- 8 Q. Is that car the car that you saw --
- 9 A. Yes, it appears to be.
- 10 Q. -- and recognize as Doyle's?
- 11 A. Yes.
- 12 Q. What color is it?
- 13 A. Brown.
- 14 Q. Is it one tone or two tone?
- 15 A. I can't tell in that picture.
- 16 Q. Does not this bottom portion look darker than the
- 17 top portion?
- 18 A. Well, it does but the sunlight is hitting it.
- 19 Q. How do you know that is sunlight?
- 20 A. On the top part of it, it looks like sunlight in
- 21 that area.
- 22 Q. Okay. Nevertheless, although it appears sunlight is
- 23 up here, it still look like it's brown or tan or tan color;
- 24 correct?
- 25 A. Appears to be.
- 26 Q. And down lower here, this look like a darker color,
- 27 doesn't it?
- 28 A. It appears to be.
- 29 Q. Is it fair to say that by the second time you

1 interviewed Curtis Flowers that he knew he was a suspect?

2 A. I can't answer that. I don't know what he knew.

3 Q. Did you tell him he was a suspect?

4 A. No. I didn't come out and say that. Not in so many
5 words.

6 Q. Was he free to leave whenever he felt like it?

7 A. Yes, sir.

8 Q. Now, with respect to gunpowder residue, there was
9 one particle that was found. Is that your understanding?

10 A. Yes, sir.

11 Q. Now, you can't even see that, can you --

12 A. I don't know. I'm not --

13 Q. -- to make it out? Did you look at Mr. Flowers'
14 hands before you actually swabbed him, or did the gunpowder --

15 A. Yes, sir.

16 Q. -- gunshot residue test?

17 A. Yes, sir.

18 Q. Could you identify gunpowder residue before doing
19 the test?

20 A. No, sir.

21 Q. And after you did the swab of his hands, you sent it
22 off to the crime lab and they have to use some kind of special
23 equipment just to see and identify gunshot residue.

24 A. I, I assume so. Yes, sir.

25 Q. When you came to Tardy that day, which route did you
26 take?

27 A. Came across Highway 82.

28 Q. On to which street?

29 A. Well, came from Greenwood. And I came across 82 and

1 hit Old Highway 82 and came into town that way.

2 Q. Did you take Summitt to get there? If you don't
3 remember...

4 A. I, I don't remember. I'm not that familiar with
5 streets and names of streets in Winona.

6 Q. Now, you got Mr. Flowers' shoes, if I'm not
7 correct -- if I'm not mistaken; is that correct?

8 A. Yes, sir.

9 Q. You, you didn't get his clothes. But you did take
10 the clothes that he had.

11 A. I think we took some clothes from his house when
12 we -- when we searched the apartment.

13 Q. Okay. Did you look for any particular type of
14 clothes or you just took whatever clothes you found at his
15 house?

16 A. We didn't take all the clothes. We took -- I don't
17 remember exactly what we took, but I know we took some.

18 Q. Were you looking for anything particular when you
19 went to his house, any particular type of clothes?

20 A. We were looking for any clothes with any blood
21 residue on them or anything like that.

22 Q. Did you find any that had blood on them?

23 A. No, sir.

24 Q. Now, besides Curtis Flowers, did you take any
25 statements from anybody else?

26 A. Yes, sir.

27 Q. Did you take a statement from James Kennedy, James
28 "Bo Jack" Kennedy.

29 A. I remember we talked to him. I don't know whether I

1 took a taped statement from him or not. I don't believe I
2 did.

3 Q. What about Catherine Snow?

4 A. We talked to Catherine. I don't know, remember
5 whether we took a statement from her or not.

6 Q. Did you talk to her more than once?

7 A. I didn't understand you.

8 Q. Did you talk to Catherine Snow more than once?

9 A. I believe we did. I believe we talked to her down
10 at the -- when we went to Angelica, and then we talked to her
11 later.

12 Q. Were you there when she was shown some photographs?

13 A. Yes, sir. When she picked the defendant out of a
14 line-up. Yes, sir.

15 Q. When you talked to her at Angelica, did she tell you
16 she saw Curtis Flowers standing at the car?

17 A. I don't believe she did.

18 BAILIFF: Your Honor. (Motioned towards the
19 jury.)

20 THE COURT: Why don't we take a short break?

21 (A BREAK WAS TAKEN.)

22 (PROCEEDINGS RESUMED IN OPEN COURT. MR. EVANS, MR. HILL,
23 MR. CARTER, MR. DEGREY AND THE DEFENDANT WERE PRESENT.

24 PROCEEDINGS WERE AS FOLLOWS:)

25 (THE JURY RETURNED TO THE COURTROOM.)

26 THE COURT: Okay. Mr. Carter.

27 Q. (By Mr. Carter:) I don't remember where I stopped
28 but, Mr. Matthews, isn't it true that you and John Johnson
29 interviewed Clemmie Fleming, I'm sorry, not Clemmie Flemming,

1 but Catherine Snow on the day that the killing took place at
2 Tardy's, which was July 16, 1996, then again on July 25, 1996,
3 and she did not tell you that she saw Curtis Flowers, and she
4 did not make her selection from any photo array saying that
5 she saw Curtis Flowers standing at the car.

6 A. I know that I talked to her on the 16th. We talked
7 to her down at Angelica. I don't -- but the other date,
8 without looking at something for sure, I wouldn't know whether
9 we talked to her. I don't remember the exact date is what I'm
10 saying.

11 Q. Well, do you know if you talked to her two times or
12 three times?

13 A. I know I talked to her twice.

14 Q. Why did she need a line-up?

15 A. Well, she, she didn't give us a name of the person
16 that she saw leaning against the car, but she thought she
17 could -- might be able to pick him out of a line-up.

18 Q. Okay. And isn't it a fact that she didn't give you
19 a name because she didn't know a name?

20 A. That's what she told us.

21 Q. That's what she told you. Thank you.

22 Now, is there -- I noticed that with Curtis Flowers his
23 statement was taped, is that correct? At least the second one
24 was, I believe.

25 A. Yes, sir.

26 Q. Is there some reason you didn't tape Catherine
27 Snow's statement too?

28 A. I don't remember why we didn't.

29 Q. Okay. You could have if you wanted to; is that

254

1 correct?

2 A. I'm sure we could have.

3 Q. In fact, you could have videotaped it, had you
4 decided to, is that correct?

5 A. Probably could have, could have arranged that.

6 Q. And, Mr. Matthews, isn't it real important that,
7 that a case be investigated carefully? Would you say that's
8 important?

9 A. Yes, sir.

10 Q. And don't you think it's also important to, to make
11 notes of what happened?

12 A. Yes, sir.

13 Q. And if you make notes, you wouldn't have to rely on
14 your memory; is that correct?

15 A. Well --

16 Q. As much.

17 A. (No response.)

18 Q. Is it fair -- well, can you answer that?

19 A. I didn't understand the question. Could you repeat
20 that?

21 Q. Is it fair to say that our memories are -- our
22 memories fade as time goes by?

23 MR. HILL: I will object to that. It would be
24 depending, Your Honor, on --

25 MR. CARTER: On whether he knows.

26 MR. HILL: He is talking about people in
27 general. So, you know, I don't think you can apply that
28 to everybody.

29 THE COURT: Sustained.

1 Q. (By Mr. Carter:) Is it fair to say, Mr. Matthews,
2 that your memory fades as time passes?

3 A. Some things. Yes, sir.

4 Q. And when it comes to investigating a case with a
5 person's life or liberty involved, it's real important to
6 memorialize what, what people say in some record that can be
7 referred to over a number of weeks and months and longer. Is
8 that fair to say?

9 A. That's fair to say.

10 Q. Now, when you went to Tardy's, how many doors did
11 you see there?

12 A. There were two doors to -- on the front.

13 Q. Two on the front.

14 A. Right. Two on the front. And there was one --
15 there was a side door, and there was a back door.

16 Q. Okay. Now, when you say two on the front, are you
17 meaning there were two separate doors or there are two
18 actually doors that open into one big door?

19 A. I think it's two doors that open into one big door.

20 Q. Okay. Now, is it fair to say that based on your
21 investigation you determined that the side door and the back
22 door had not been opened or couldn't be opened?

23 A. They were not opened, didn't appear to have been
24 opened.

25 Q. Okay. Now, did you give a gunshot residue test to
26 anyone else?

27 A. No, sir.

28 Q. Didn't you also talk to Doyle Simpson?

29 A. Yes, sir.

1 Q. And you knew it was his gun; is that correct?

2 A. Well...

3 Q. At some point you, you knew that a gun was stolen
4 from his car; is that correct?

5 A. That's correct.

6 Q. Okay. You didn't give him a gunshot residue --

7 A. No, sir.

8 Q. -- test. And didn't you also learn that, that there
9 was a Emmitt Simpson who had been talked to by -- did you talk
10 to Emmitt Simpson?

11 A. Yes, sir.

12 Q. Did you give him a gunshot residue test?

13 A. No, sir.

14 Q. Now, with respect to Grant Hill Fila II tennis
15 shoes, did you make any kind of effort to find out if anybody
16 else in Winona had any or wore any?

17 A. Well, I'm sure that somebody in Winona probably wore
18 some, but I -- we didn't come across anybody else in the
19 investigation that had them.

20 Q. Okay. And you can't come across anybody else if you
21 don't make a effort to. Is that fair to say?

22 A. Well, yeah. I guess that would be fair to say.

23 Q. Now, this money that was found at Connie Moore's
24 house, I believe you said \$235.

25 A. Yes, sir.

26 Q. Or something around there. You have no idea where
27 that money came from, do you?

28 A. No, I don't.

29 Q. You have no proof that that money came from Tardy's,

1 do you?

2 A. No, sir.

3 Q. Now, with respect to getting gunshot residue on your
4 hand, isn't it pretty easy to get it on there if you have been
5 around a gun or around somebody that has shot a gun, if you
6 are in someplace where gunshot residue exists, if you touch an
7 object that gunshot residue is on?

8 A. I don't know exactly how -- I don't think that you
9 can just get it in the atmosphere. I think you got to be
10 pretty close to the muzzle blast of that gun to get it.

11 Q. Right. And if you are around that, around a gun
12 that was shot at some point or around somebody who has shot a
13 gun and they had gunshot residue on them, it could be
14 transferred from them to you; is that fair to say?

15 A. I'm sure it's possible.

16 Q. Now, are you sure -- now, I don't know if you have
17 been asked this before, but you didn't shake Mr. Flowers'
18 hands, did you?

19 A. No, sir.

20 Q. Were, were you wearing a gun back then?

21 A. I don't remember whether I had one right then or
22 not.

23 Q. Do you know if Mr. Wayne Miller was wearing a gun?

24 A. I don't remember.

25 Q. John Johnson.

26 A. I don't know at that time.

27 Q. Now, this interview occurred at the Winona Police
28 Department with Mr. Flowers; isn't that correct?

29 A. That's correct.

1 Q. Now, with respect to Mr. Flowers' statement, how
2 many years have you been involved with police investigation?
3 Or how long have you been involved with police investigation
4 by that time?

5 A. Approximately 22 years at that time.

6 Q. Okay. Now, just think about Mr. Flowers changing
7 his statement. Now, suspect changing their statements is not
8 a uncommon occurrence, is it?

9 A. No, sir.

10 Q. And is it fair to say based on your experience as a
11 police officer that even completely innocent people change
12 their statements in some way from time-to-time?

13 A. Occasionally.

14 Q. Now, this money bag that we saw a few minutes ago,
15 do you know if anybody dusted that for fingerprints?

16 A. We sent it to the crime lab. I don't know what --
17 without looking at the crime lab report, I don't know what was
18 done with that bag.

19 Q. Okay. Thank you.

20 MR. CARTER: One moment. I think I'm finished.

21 We tender, Your Honor.

22 REDIRECT EXAMINATION BY MR. EVANS:

23 Q. Mr. Matthews, was there any reason to do a gunshot
24 residue test on Doyle Simpson or Emmitt Simpson?

25 A. No, sir.

26 Q. Why was that?

27 A. We knew their whereabouts during that time.

28 Q. So you were able to eliminate them as suspects?

29 A. That's right. They were at work. Both of them were

1 working at the time.

2 Q. You were asked about not going all over Winona and
3 checking to see who wore Fila tennis shoes. Was anyone other
4 than Doyle Simpson -- I mean other than Curtis Flowers
5 identified standing by Doyle Simpson's car?

6 A. Sir.

7 Q. Was anyone other than Curtis Flowers identified to
8 law enforcement as being the person standing beside Doyle
9 Simpson's car?

10 A. No, sir.

11 Q. Was anyone other than Curtis Flowers identified as
12 being the person standing at the door of Tardy's to you?

13 A. No, sir.

14 Q. Was anyone other than Curtis Flowers identified to
15 you as being the person running from Tardy's?

16 A. No, sir.

17 Q. Was there any need in finding out who else wore Fila
18 shoes?

19 A. No, sir.

20 MR. EVANS: Nothing further.

21 THE COURT: You may step down.

22 Who do you have next, Mr. Evans?

23 MR. EVANS: David Balash.

24 (THE WITNESS ENTERED THE COURTROOM AND WAS ADMINISTERED
25 THE OATH.)

26 THE COURT: Have a seat right there, sir.

27 THE WITNESS: Thank you, sir.

28 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

29 THE COURT: State your name, please, sir.

1 THE WITNESS: David E. Balash.

2 DAVID E. BALASH, Called on behalf of the State, having
3 been duly sworn, was examined and testified as follows:

4 DIRECT EXAMINATION BY MR. HILL:

5 Q. Good afternoon, Mr. Balash.

6 A. Goods afternoon, sir.

7 Q. I just want to tell you before we get started that
8 microphone there in front of you does not amplify your voice.
9 So I'm going to request, if you can, please speak loudly so
10 that everybody as far back as I am can hear you.

11 A. Yes, sir.

12 Q. Would you tell the ladies and gentlemen of the jury,
13 please, sir, what you do for a living, sir?

14 A. Currently I'm a independent firearms examiner,
15 forensic science consultant.

16 Q. And would you share with us about your training and
17 experience that has qualified you to become an independent
18 firearms examiner?

19 A. My training experience began in 1966 when I enlisted
20 in the Michigan State Police, attended recruit school, 13-week
21 school. I graduated and was assigned as a road trooper first
22 to Niles Post for about two-and-a-half years and then to the
23 Sandusky Post for about two-and-a-half years.

24 In January of 1972, I was assigned to the Forensic
25 Science Division in the Firearms Identification, Tool Mark,
26 Bombs and Explosives Unit. And I remained in that unit
27 training as a firearm's examiner for the next 20 years.

28 My training consisted of working with an expert in the
29 field. At that time his name was Earl C. Leedle, (phonetic)

1 and he was the head firearms examiner at our Plymouth
2 laboratory that I was training at.

3 I stayed at the Plymouth laboratory, was promoted to
4 detective sergeant and then to detective lieutenant. And I
5 was in charge of that unit for the last 15 years of my
6 employment. And when I retired in '92, I was the senior
7 firearms examiner for the State of Michigan.

8 Q. How many years of experience, if you will tell us
9 since I didn't do the addition or subtraction, how many years
10 of experience have you had as a certified firearms examiner?

11 A. Well, there is no certification as such. I mean
12 there is no national organization. I'm a member of the
13 Association of Firearms and Tool Mark Examiners, but
14 there's -- there's not a certification program that I'm aware
15 of. But I've been a firearms examiner actively for 35 years.

16 Q. Have you ever been qualified as an expert and
17 testified as an expert in circuit courts or other state courts
18 in the United States?

19 A. Yes, I have.

20 Q. Would you tell us what courts have accepted you as
21 an expert in the field?

22 A. The majority of the courts would be in Michigan, in
23 Wayne County. The Northville and Plymouth laboratories are in
24 the western suburbs of the Detroit metropolitan area and that
25 is Wayne County, Michigan. Also in the circuit and district
26 courts in Oakland, McComb, Washtenaw, Lenawee and Allegan
27 Counties. All these are in Michigan.

28 I've also testified in the circuit courts in Wisconsin,
29 Illinois, Ohio, Pennsylvania and California, as well as

1 Mississippi. And there is some federal court also. They may
2 be in the same jurisdictions.

3 Q. All right, sir. And about how many times, just an
4 estimate of how many times, have you qualified and testified
5 as an expert in your field?

6 A. I'm sure it's in the area of approximately 400
7 occasions.

8 MR. HILL: Your Honor, with this testimony from
9 Mr. Balash, I will offer him to the Court as an expert in
10 the fields of firearms identification.

11 MR. CARTER: We have no objection.

12 THE COURT: Okay. The Court accepts him as an
13 expert in that field.

14 Q. (By Mr. Hill:) Mr. Balash, because of your
15 expertise in this field, firearms identification, were you
16 asked to come to Jackson, Mississippi, at our crime lab and
17 examine some evidence that we had there in this case?

18 A. I was.

19 Q. Do you recall when that was that you came down here
20 and looked at that?

21 A. I believe it was in '98 to begin with, sir. August
22 '98.

23 Q. Okay. And if you were to see the items of evidence
24 that you examined, do you believe you would be able to
25 recognize them?

26 A. I will.

27 Q. Okay. I'm going to hand these, call out the numbers
28 on them, just a minute here and hand them to you.

29 This one is marked for our court purposes as State's

1 Exhibit Number 88, would you look at that, sir, and see if you
2 recognize it?

3 A. State Exhibit 88 is a white, pill box. And it has
4 my laboratory number, 621-98; and my initials, DEB, on the
5 outside of it. It's also sealed with my initials. I do
6 recognize this.

7 Q. Did you examine that item of evidence?

8 A. I did, sir.

9 Q. Can you tell us what, what's in that box?

10 A. It reportedly contains a fired cartridge case of CCI
11 manufacture, .380 auto caliber. One fired cartridge case.

12 Q. I hand you State's Exhibit 89, sir.

13 A. State's Exhibit 89 also is a white, pill box. It is
14 sealed. It bears my laboratory number, 621-98 and my
15 initials. And it remains in a sealed condition. My signature
16 is on the seal.

17 Q. Did you examine that?

18 A. And it contains a .380 auto caliber fired cartridge
19 case of Remington Peters manufacture. I did examine this,
20 sir.

21 Q. Thank you, sir. And State's Exhibit 90.

22 A. State's Exhibit 90, again, is a white, pill box.
23 Again, it bears my laboratory number, 621-98; my initials. It
24 is sealed, and it is in the sealed condition. I do recognize
25 this. It reportedly contains also the .380 auto caliber fired
26 cartridge case of CCI manufacture.

27 Q. State's Exhibit 91, sir.

28 A. State's Exhibit 91 is a white pill box. It has my
29 laboratory number, 621-98; my initials. It is sealed. It

1 reportedly contains a .380 auto caliber CCI fired cartridge
2 case. I do recognize this, sir.

3 Q. State's Exhibit 92.

4 A. State's Exhibit 92 is a white, pill box. It also
5 bears my laboratory number, 621-98; my initials. It's sealed.
6 It reportedly contains -- difficult to see this one. I cannot
7 see on the outside of the -- of the container what's inside.
8 The tape is obscuring it. So I, I cannot read what it is,
9 sir.

10 Q. Which one is that?

11 A. This is 92.

12 Q. Okay. Is there any way you can look at that and
13 tell for sure if you examined it?

14 A. Yes, sir, I can.

15 Q. How do you do that?

16 A. I can refer to my report.

17 Q. Would you, please?

18 A. Certainly. State's Exhibit 92, according to my
19 report, is a .380 auto caliber fired cartridge case of
20 Winchester manufacture.

21 Q. Okay.

22 A. I do recognize that item, sir.

23 Q. Okay. You had told us that you recognized them,
24 identified your markings on all of them but that last one.
25 You indicated that they reportedly contain a certain item, and
26 you said that you examined them. Can you tell us -- or strike
27 that.

28 My question is can you tell us if you examined each of
29 those fired cartridge cases.

1 A. I did.

2 Q. Okay. Would you continue, please, Mr. Balash, and
3 tell us what your examinations consisted of when you looked at
4 those five cases? Would you tell us what you did to examine
5 them, what you were looking for and what you found?

6 A. These five fired cartridge cases are all .380 auto
7 caliber. By utilizing the equipment at the state police
8 facility in Jackson, which is a comparison microscope, I
9 examined this under a microscope and, and looked at the
10 characteristics that are needed to determine whether or not
11 the cartridge case had been fired in a weapon.

12 And the features that I would be looking for would be the
13 firing pin impression; the breech impression, which is the
14 back-end of the cartridge that comes in contact with the
15 breech of the weapon; and chamber markings. And the chamber
16 markings are the sides of the cartridge case.

17 When a weapon is fired, the cartridge case itself will
18 actually expand to fill that area and keep the gases contained
19 so that it expels the bullet out of the barrel of the weapon.
20 And in a semi-automatic pistol, that almost -- the only
21 weapons that I know of that fire .380 are semi-automatic in
22 nature.

23 The extracting portion of it requires that they pull this
24 fired cartridge case from the chamber. And when they are
25 pulling this fired cartridge case from the chamber, it's under
26 pressure. And it will leave chamber marks or can leave
27 chamber marks that are identifiable.

28 So these could have firing pin impressions, breech
29 impressions and chamber impressions that could allow them to

1 be identified as having been fired in a weapon. They may also
2 have extractor projector markings, but those don't mean they
3 were fired in the weapon. They simply mean that they were
4 cycled through the weapon.

5 So I looked at all of these for firing pin, chamber and
6 breech impressions and came to the opinion all five of these
7 were fired in the same weapon.

8 Q. Mr. Balash, pardon me. You've stated that you came
9 to the conclusion that it was your opinion that all of these
10 five cartridge cases were fired in the same weapon. Can you
11 tell us if that -- if the standard for your opinion is to a
12 reasonable degree of scientific certainty?

13 A. It is. If I'm not convinced 100 percent that only
14 one gun on the face of the earth would have done this, I would
15 not say that they are a positive identification. I have to be
16 absolutely, positively assured that they were all fired in one
17 gun; otherwise, I wouldn't say that.

18 Q. So what you are saying to us is that you are 100
19 percent certain all five of those cartridge cases were fired
20 in the same weapon.

21 A. That is correct, sir.

22 Q. Now, I know -- I heard you testify that some of
23 those were, I believe you said, CCI. I think you said some of
24 them were Remington. And I think you mentioned Winchester.

25 A. That is correct. Yes, sir.

26 Q. Perhaps. Is that correct?

27 A. That is. There are three CCI or Omark Industries,
28 as I call them. There is one Remington Peters, and there is
29 one Winchester Western.

1 Q. Okay. Can you tell us, just for the record, again,
2 because I didn't -- I didn't catch it, which one is -- which
3 exhibit number, which State's exhibit number is the Remington
4 Peters? Which State's exhibit number is the Winchester
5 Western?

6 A. I believe State's Exhibit 92 was the Winchester
7 Western, and State Exhibit 89 was the Remington Peters.

8 Q. I have -- Mr. Balash, I have several other exhibits
9 that I'm going to ask you about.

10 First of all, I'm going to show you State's Exhibit
11 Number 81. Would you look at that and see if you can
12 recognize this, recognize it and tell us what it is, please?

13 A. State Exhibit 81, is a manila, coin envelope. It
14 has my laboratory number, 621-98; my initials. And it
15 reportedly contains one fired or one spent projectile. It's
16 in the sealed condition. The tape has got my initials across
17 it. It does contain a fired bullet.

18 Q. What information did you have about where that
19 bullet was recovered? And you feel free to consult your
20 notes.

21 A. May I refer to my report?

22 Q. Certainly. You may.

23 A. State's Exhibit Number 81 was a bullet that I had
24 listed as coming from Doyle house or post.

25 Q. That's going to be Doyle Simpson's, the post of his
26 house. All right, sir.

27 I have State's Exhibit Number 82.

28 A. State's Exhibit 82 is a white envelope. And again,
29 is in a sealed condition. It has my initials. It has a

1 laboratory number, I believe, on here. Yes, up at the top.
2 My laboratory number, 621-98, with my initials. It is sealed.
3 And it reportedly contains one fired bullet. And I can see
4 that it does contain one fired bullet.

5 Q. Do you have, either on the envelope or in your
6 notes, information as to where that projectile came from?

7 A. I do. This 82. This also came from Doyle's house
8 or the post is what I have it listed as.

9 Q. Did you examine both of those projectiles?

10 A. I did.

11 Q. What could you tell us about them, sir?

12 A. Both of these projectiles were .380 auto caliber
13 fired bullets. And they each displayed class rifling
14 specifications, six lands and grooves with a right twist. And
15 they had some amount of damage to them but not a great deal.

16 Q. Were you able to compare the two bullets with each
17 other?

18 A. I was.

19 Q. What, if any, findings did you make as to the
20 comparison of those two projectiles?

21 A. It was my opinion that these two fired bullets were
22 fired from the same .380 auto caliber handgun.

23 Q. Okay. I want to continue, if I may, handing you
24 some additional evidence. I want to hand you State's Exhibit
25 Number 83 and just ask you if you recognize that and tell us
26 what it is, please.

27 A. State's Exhibit 83 is a white, pill box. My
28 laboratory number, my initials on it. It is sealed. And it
29 is listed as a projectile collected, and it's in a sealed

1 condition. It still should have a fired bullet in it.

2 Q. Do you have -- do you have that in your notes as to
3 what bullet that is?

4 A. Yes. It's S-83. And it's a fired bullet, has
5 severe damage to it. There is another note on here that S-83
6 is a bullet from the floor of the store.

7 Q. All right, sir. And I'll just take that from you
8 for a minute.

9 I want to hand you State's Exhibit Number 84 and ask if
10 you would look at that bullet or tell us what that it is.

11 A. State's Exhibit 84 is, again, a white, pill box. It
12 has my laboratory number on it and my initials. It's in a
13 sealed condition. And it says projectile collected from
14 underneath loveseat, south side. So it contains a fired
15 bullet. I do recall seeing this, sir.

16 Q. Did you examine it?

17 A. I did examine it. Yes.

18 Q. What, what is in that exhibit?

19 A. It's a fired bullet, a .380 auto caliber fired
20 bullet, six lands and grooves with a right twist.

21 Q. Is that the same class characteristics as you
22 described for the other projectile?

23 A. Yes, sir.

24 Q. That came from Doyle Simpson's post at his house.

25 A. That is correct, sir.

26 Q. I want to hand you -- let's see. Next I want to
27 hand you State's Exhibit Number 85 and ask you to take a look
28 at that, please, sir.

29 A. State's Exhibit 85 is a -- is a white, pill box with

1 my laboratory number, my initials. Indicates fragment
2 collected near Carmen Rigby.

3 Q. What is a fragment, sir?

4 A. Well, a fragment, depending on who writes the word
5 fragment, we are referring to a fired bullet. I have a
6 criteria. If it's a fired bullet, it means it's an entire
7 projectile. If it's slightly damaged or just parts of it are
8 missing, I'll still call it a fired bullet. If it's a great
9 deal of material missing, I'll call it a portion of a fired
10 bullet.

11 If there is a whole lot missing, and it's just a piece,
12 then I'll call it a fragment. A fragment to me is a smaller
13 piece of a fired bullet. This was listed as a fragment of a
14 fired bullet.

15 Q. Did you concur in the description of that as a
16 fragment? In other words, did you identify that and tell us
17 what your findings are as to what that box actually contains?

18 A. It contained a fragment of rifled material that I
19 found consistent with a .380 automatic.

20 Q. You did find that consistent with .380 automatic.

21 A. That is correct, sir. Semi-automatic.

22 Q. I'm sorry. State's Exhibit 93, Mr. Balash.

23 A. State's Exhibit 93, again, is a white, pill box.
24 It's sealed. My laboratory number, my initials are on it.
25 And it reports cartridge CTI. And this was found -- and I see
26 where it says near Carmen Rigby.

27 Q. Okay. Did you examine that?

28 A. I did.

29 Q. Tell us what -- just what you found when you

1 examined it.

2 A. This is an Omark Industries entire cartridge. In
3 other words, it's unfired. It has a bullet, cartridge case, a
4 primer and gunpowder in it. It's something that you would put
5 into a gun to fire. And it also has damage to the nose of
6 this particular cartridge that tells me that it was functioned
7 at some point in time in the action of a pistol but jammed the
8 pistol. And then was cleared from that pistol.

9 Q. And you, you made -- you arrived at that opinion
10 about it being jammed why? Explain to us again why you
11 thought it was from a jammed --

12 A. The reason I thought it was jammed, it is just
13 something that I saw and immediately knew what it was. It had
14 been jammed in the action of a firearm, and you could see the
15 damage to the nose of the bullet indicative of that. So
16 therefore, it wasn't a long examination.

17 It, it -- just through years of looking at these things,
18 it was -- you looked at it, and you knew what it was. It had
19 been jammed in the mechanism. The mechanism had been cleared,
20 and this cartridge fell to the floor.

21 Q. I hand you State's Exhibit Number 86. Take a look
22 at that, Mr. Balash.

23 A. State's Exhibit 86 is a clear, plastic baggy. It
24 has an amount of tape on. There is some writing on it from
25 a -- from a pencil.

26 It's hard to see any other marks on it anymore. They
27 seem to have rubbed off a bit. I'm looking for any marks that
28 would be attributable to me. At this point, I don't see them
29 on the outside.

1 Q. You may remove that if you need to, to closer
2 examine --

3 A. No. I think I can. I can't see my markings. I
4 would have marked this, but I don't see where my markings have
5 survived the handling process.

6 But the tube itself, if I can get that, it's contained
7 within there. It's a fragment from Carmen Rigby.

8 Q. Okay.

9 A. I do recognize this item as having been an item that
10 I did examine.

11 Q. Okay. And the only reason for examining the writing
12 is to see -- if you can examine that. Our question is do you
13 have in your notes or otherwise by the exhibit number or any
14 other identification, can you tell us if you examined that
15 item?

16 A. Yes, sir, I can.

17 Q. Okay. And --

18 A. Referring to my notes, this is Item 86, State's
19 Exhibit 86. And according to my notes State's Exhibit 86 is a
20 clear, plastic bag containing a plastic tube. And the plastic
21 tube contains two copper jackets and lead fragments, a
22 quantity of paper and fragments of copper and lead. And it's
23 identified as coming from Rigby on my report.

24 Q. All right, sir. And tell the ladies and gentlemen
25 of the jury, sir, did you examine that exhibit?

26 A. I did.

27 Q. Tell us what you found it to contain and describe
28 what that means to you.

29 A. What's contained within People's 86 is fragments of

1 copper jacket and lead core. And the copper jacket had
2 sufficient rifling specifications on it that in utilizing all
3 the fired bullets that I identified on this particular case.

4 Under a comparison microscope, I compared this fragment
5 to various segments and was able to positively identify this
6 fragment as having been fired from the same gun that fired
7 Items 81 and 82. And I believe this one. There was one other
8 one at this time. It's 85. I'm sorry. 81, 82, 86. And I'm
9 not sure if I have 84 on here or not. Yes. 84.

10 So it would be 81, 82, 84 and now this in 86. They are
11 all identified as having been fired from the same weapon.

12 Q. Okay. Mr. Balash, I have one exhibit remaining in
13 my hand here. It's State's Exhibit Number 80. Would you
14 please take a look at that and tell us what that is?

15 A. State's Exhibit 80 is, again, a white, pill box. It
16 has my lab number on it and initials. It contains one fired
17 bullet. And this bullet is a .380 auto caliber fired bullet
18 that displays class rifling specifications. Again, six lands
19 and grooves with a right twist.

20 This was recovered from a mattress at the Tardy Furniture
21 Company. This actually would have been the first item that I
22 would have examined in the process.

23 Q. And did you examine it?

24 A. I did.

25 Q. And you said, if I understood you correctly, the
26 class characteristics of that were the same as you testified
27 about the bullet from the post.

28 A. That is correct, sir.

29 Q. Okay. Did you compare this .380 caliber projectile

1 in State's Exhibit Number 80 that came out of a mattress in
2 the Tardy Furniture Company to the two projectiles that came
3 out of the post at Doyle Simpson's house?

4 A. I did. That was my first examination.

5 Q. Tell us if the -- what the results were from your
6 comparison studies between the bullets from the post and this
7 bullet from the mattress at the furniture store.

8 A. People's Exhibit 80, the fired bullet, and the two
9 fired bullets containing one in People's Exhibit 81 and 82 are
10 all identified as having been fired from the same weapon, a
11 .380 auto caliber semi-automatic pistol with rifling
12 specifications, six lands and grooves with a right twist.

13 Only one gun and no other gun on the face of the earth
14 fired all of these items.

15 Q. Now, with respect to State's 86, that were the
16 fragments, I think you said they were lead and copper
17 fragments --

18 A. Correct.

19 Q. -- removed from Miss Rigby. Were you able to
20 determine what kind of weapon, first of all, fired these? And
21 did you compare this -- were you able to make a comparison
22 with these fragments to the bullet from the mattress and the
23 two bullets from the post?

24 A. That is correct. Identified the fragments first as
25 .380 auto. And with the comparison microscope, I compared
26 that fragment that came from Miss Rigby's body against the
27 three bullets that you see, 80, 81 and 82, and positively
28 identified that fragment as having been fired by the same
29 weapon that fired 80, 81 and 82.

1 Q. Is that to a reasonable degree of scientific
2 certainty?

3 A. It is. It's absolutely sure in my mind.

4 Q. Now, we had some other -- we had some other
5 projectiles, and I want to ask you about State's 85, which
6 was -- State's 85 was a fragment found near Miss Rigby. Were
7 you able to make any determinations about that?

8 A. I was. The, the determination I made about that, it
9 was a .380 auto caliber. It displayed six lands and grooves
10 with a right twist rifling. However, it was damaged to badly
11 for me to positively identify it with the other items in
12 evidence. So it could have come from the same gun, but I
13 cannot say that it did.

14 Q. With regard to State's 84, which I believe you
15 testified is labeled as the bullet that was found near the
16 loveseat in the store.

17 A. That is correct.

18 Q. Did you compare it with the fragments from Miss
19 Rigby, from the bullet in the mattress and the two bullets
20 from the post?

21 A. Not exactly. I compared it to the two bullets from
22 the post and the one from the mattress. I did not compare it
23 to the fragment from Mrs. Rigby. But I did compare it because
24 the other three are more viable test mediums.

25 And I concluded that this bullet also was fired from the
26 same weapon that fired all four of these other items. So all
27 five of these came from the same weapon.

28 Q. Okay. Is that to a reasonable degree of scientific
29 certainty?

1 A. Yes, sir, it is.

2 Q. Okay. All right. I think that concludes the
3 questions that I have that involves actually handling the
4 evidence. I am going to leave it here in case you need to
5 refer to it. Let me take some of that paper out of your way.
6 I am just going to put this here in case you need to refer to
7 it.

8 Mr. Balash, with regard to the bullet that was labeled as
9 having come from the mattress at the furniture store, I
10 believe that was 80, State's Exhibit 80. When you examined
11 that bullet, did you notice any damage to that projectile?

12 A. I did.

13 Q. Would you describe that damage for us, please?

14 A. I described the bullet as having damage to the base,
15 and what I would call damage caused by ricochet. The bullet
16 struck something very solid at an acute angle and then was
17 deflected to its final position in the mattress.

18 Q. Would that damage that you saw be consistent with
19 that bullet having struck a brick column?

20 A. Yes, it could.

21 Q. With regard to a .380 auto caliber cartridge, does
22 that have a primer on the end? I guess it's the base of the
23 bullet.

24 A. It is. It's a center fire primer. It's in the
25 center of the base of the cartridge.

26 Q. I think in your report, Mr. Balash, if I can refer
27 you back to that, when I was looking at that I noticed you had
28 a line on there that caught my attention. What can you --
29 what can you tell this jury about evidence from the fired

1 bullets and the fired cartridge cases with regard to their
2 consistency as to the manufacture of the -- of those items?

3 A. All the fired bullets in cartridge cases on this
4 particular case are .380 auto caliber. The recovered fired
5 bullets are combination of jacketed, full-metal jacketed
6 bullets, which means there is an exposed area of lead at the
7 base of the bullet. And then there is a total metal jacketed
8 bullet, which means that the entire bullet is coated in a
9 copper plating.

10 The copper plating process is a technique utilized by
11 Omark Industries or CCI. There are three fired cartridge
12 cases of CCI manufacture that were found at the scene. The
13 full metal jacketed bullets that have the exposed lead at the
14 base are consistent with both the Remington Peters and the
15 Winchester Western bullets, and those bullets are consistent
16 with their respective manufacture.

17 So what you have in this scene are three CCI fired
18 cartridge cases at the scene - one Remington Peters fired
19 cartridge case at the scene, one Winchester Western fired
20 cartridge case at the scene. And all the bullets recovered on
21 this case are CCI Winchester Western and Remington Peters.

22 So the evidence correlates together. The bullets that
23 were recovered correlate to the fired cartridge cases that
24 were recovered.

25 Q. You said the bullets that were -- that you examined
26 correlated to the cartridge cases.

27 A. Correct.

28 Q. And what, if anything, Mr. Balash, does that tell us
29 about whether or not there was just one weapon used for all of

1 these cartridge cases?

2 A. Well, it would further solidify in my mind that
3 there is only one weapon being utilized. The reason I say
4 that, obviously, the best would be to have the weapon to
5 compare both the fired cartridge cases and the fired bullets
6 with. But one cannot take a fired bullet and put it back into
7 the fired cartridge case normally. Rarely can that take
8 place.

9 But what this case is telling me that the fired bullet
10 evidence and the fired cartridge case evidence matches. And
11 it's a mixture of cartridges at the shooting scene of three of
12 one type and one of another and one of a third one. And all
13 this combination is together.

14 So therefore the possibility of somebody, for example,
15 using a weapon to commit all of these murders, then going over
16 and picking up all their fired cartridge cases at the scene
17 and then having that ready, other fired cartridge cases to
18 replace them, would be astronomically low in my opinion.
19 You'd have to have somebody that would have planned this out
20 and had a sophisticated knowledge.

21 Unfortunately, somebody like myself. If I were to have
22 tried to doctor-up a scene might have thought of that. Other
23 than that, I can't think of anyone that would have been
24 prepared to do something along those lines. Which leads me to
25 believe this is the act of a single weapon because of the
26 nature of this particular case and the evidence that was
27 found.

28 Q. Okay. And just so I am clear, are you telling us
29 that in spite of the fact that you found a Remington Peters

1 round or casing and the projectile consistent with having come
2 from that and a Winchester Western casing and fragments or
3 round that came from that and the CCI -- in other words, you
4 have three different types. Are you saying to us that all
5 three of those are still consistent with having been fired in
6 the single weapon?

7 A. Absolutely. One doesn't have anything to do with
8 the other. And it's not in spite of. But it actually makes
9 it a much stronger bond that only one weapon was used when you
10 marry the three fired cartridge cases together with the fired
11 bullets that were found, both in the victims and at the scene
12 itself, as well as in the post.

13 Those weren't considered part of the -- of the exam for
14 that reason. But those tell me that they were only fired in
15 one weapon and one weapon alone.

16 Q. Okay. And that is to a reasonable degree of
17 scientific certainty in your mind.

18 A. Correct. I can't say positively. But to a
19 reasonable degree, it's exceptionally consistent with one
20 weapon.

21 Q. I think this is my final question for you, sir.

22 Would you -- using the evidence that you have up there,
23 would you tell us which State exhibit numbers, which items of
24 evidence that you were able to determine that were fired from
25 the same gun as the two bullets that came from Doyle Simpson's
26 post?

27 A. Yes, sir.

28 Q. You follow that? You understand that question?

29 A. I do.

1 Q. Kind of a long question.

2 A. That eliminates all the fired cartridge cases
3 immediately. But the three items that would be identified as
4 having been fired from the same weapon that fired the two
5 bullets found in the Doyle's post would have been the
6 fragment, which would be State's Exhibit 86 from Mrs. Rigby;
7 the fragment, which was Number 82, which was found -- I'm
8 sorry, 80, which was in the mattress; and then 84. I gotta
9 find which one is State's Exhibit 84. Here it is. I'm sorry.

10 Eighty-four is the portion or projectile near the love
11 seat. So it's the fragment, which is State Exhibit 86 from
12 Mrs. Rigby; the bullet near the -- I believe near the
13 loveseat; and then the bullet from the mattress, which would
14 have been People's Exhibit Number 80, which was taken from
15 Tardy Furniture. These three items are identified as having
16 been fired from the same gun that fired the two bullets taken
17 from the post at the Doyle home.

18 MR. HILL: Tender the witness, Your Honor. One
19 minute. One minute.

20 Q. (By Mr. Hill:) I have one other exhibit. State's
21 Exhibit Number 87. Would you look at that and just tell us if
22 you examined it.

23 A. I did. State's Exhibit 87, again, is a clear,
24 plastic bag. A lot of the numbering has been rubbed off. I
25 would have marked it in a similar fashion, but I don't see
26 that. It contains a clear plastic tube.

27 And I can refer to my report?

28 Q. Please, sir.

29 A. My report indicates that it's a plastic tube

1 containing a portion of a total metal jacket or full metal
2 jacketed fired bullet, with two small fragments of copper.

3 What I did is in examining these, I saw that there were
4 fragments consistent with .380 auto caliber fragments. They
5 had that rifling specifications of six lands and grooves with
6 the right twist consistent with, but there was not enough
7 information to do anything else with them. I could not
8 identify them as to what type of firearm they came from.

9 Q. Okay. Now, let's see. In my State Exhibit Number
10 87 is listed as fragmented bullet removed from Mr. Robert
11 Golden. Would this bullet fragment -- did you -- did I
12 understand you to say that they are consistent with a .380
13 auto caliber?

14 A. Yes, they are.

15 Q. And would that then be consistent with your findings
16 of all the rest of this, that they were also .380 caliber?

17 A. Every piece of evidence that had rifling on it on
18 this case was consistent with the .380 auto caliber fired
19 bullets displaying class rifling specification of six lands
20 and grooves with a right twist. They are all consistent one
21 to the other. Some I could identify; some I could not.

22 Q. On everything that you looked at, did you see
23 anything that indicated that any of the evidence you looked at
24 had been fired in a gun other than the same gun that fired all
25 of these?

26 A. No, I did not.

27 MR. HILL: Tender the witness.

28 CROSS-EXAMINATION BY MR. CARTER:

29 Q. Mr. Balash, is it true that you also have expertise

1 in -- expertise that encompasses knowledge of deposits of
2 gunshot residue?

3 A. Yes. I worked on gunshot residue my entire career.
4 It is part of firearms identification.

5 Q. Now, you can have gunshot residue on you and it can
6 come from a variety of different objects and persons. Just
7 merely having gunshot residue on you doesn't prove you shot a
8 gun. Is that fair to say?

9 A. That's fair to say, but there are two types of gun
10 powder residue. One would not agree with what you are saying.
11 The other one would.

12 Q. Could you explain?

13 A. There are two types of gunpowder testing being done.
14 One is for essentially distance determination, which measures
15 muzzle to target distance. That involves what comes out of
16 the muzzle. And what comes out of the muzzle is not only the
17 fired bullet, gases and parts of partially burned and unburnt
18 gunpowder.

19 Now, that will come out, and they will go for different
20 distances. Gas may travel from weapons up to maybe 18 inches
21 away where you might be able to see that. Gunpowder itself
22 will travel much further. So if a person is holding a weapon,
23 for example, two feet from the victim they are shooting, there
24 is a very substantial chance that there will be gunpowder
25 deposited on the shooting victim.

26 And in examining that and if you have the right weapon
27 and the right ammunition combination or the one that caused
28 this, you can theorize how far away the muzzle was from the
29 victim at the time of the shooting.

1 This is very important on many cases where they may claim
2 that it's a self-defense issue. But if you don't see any
3 gunpowder and the gun deposits the gunpowder up to five feet,
4 it's difficult to be in a self-defense or struggle situation
5 and no gunpowder.

6 If they say it was from a distance, then there is either
7 heavy concentrations or a contact wound, then you know the
8 story you are being told is incorrect. So that is one type of
9 examination.

10 The second one is a -- essentially is really a primer
11 residue examination. What they are looking for are primer
12 residue compounds in center fire ammunition. And in the back
13 of a cartridge, that little dot in the middle of the center is
14 the primer. And in that compound are contained the elements
15 barium and antimony.

16 And what takes place in the firing of a weapon, these
17 compounds, barium and antimony, under the pressure of being
18 fired will actually form a small spherical shape. But they
19 are very, very, very small.

20 They are in essence about a micron. A micron is
21 one-millionth of a meter. If you took -- I'm holding my
22 fingers approximately a half an inch apart. You can stack
23 literally 10,000 microns end-to-end in that space. That's how
24 small those particles are.

25 You cannot see them with the naked eye. You cannot see
26 them with a normal microscope unless it has an exceptionally
27 powerful magnification. They are normally looked at using
28 scanning electron microscope.

29 What these compounds tell you is that a weapon has been

1 fired because we find that nowhere else in nature, these
2 spherical forms of antimony and lead, as well as barium. I'm
3 sorry. I lost my train of thought. And you don't see these
4 unless it's in the firing process of a weapon. So when you
5 find these, you are near a weapon that has been fired.

6 Q. So, I take that to mean, if I'm understanding, that
7 most of the time when gunshot residue tests are done, what
8 they are actually testing for is primer residue.

9 A. I don't know if it's most of the time but a lot of
10 them test for primer residue. And depending on the case, the
11 other one detects for muzzle to target distance. So it
12 depends on the circumstance of what they are looking for.

13 Q. Thank you.

14 So gunshot, gunshot residue is this particle that has a
15 spherical or molten appearance. Is that what you are saying?

16 A. I'm sorry. What one again, sir?

17 Q. So gunshot residue has this -- it's a particle with
18 a spherical appearance. Is that what you are saying?

19 A. The one that comes from the primer residue, yes.
20 That's the one that they are looking for. It's a combination
21 of barium and antimony or barium, antimony and lead.

22 Q. Okay. Is it fair to say that a presumption in lots
23 of police departments that if, if you have left the firing
24 range and fired a gun and if you have any kind of primer
25 residue on you or gunshot residue that you have, in fact, used
26 a gun to actually shoot somebody.

27 That might be kind of confusing the way I put it.

28 A. That might be a little. If you could straighten
29 that out a little bit, I would appreciate it.

1 Q. Yeah. I would too.

2 In other words, the fact that you have some gunshot
3 residue on you is not in itself evidence that you actually
4 fired a gun; is that correct?

5 A. That's absolutely correct.

6 Q. And you can get it from -- it can be transferred to
7 you by hugging somebody that has it on them. It can be
8 transferred by shaking hands with somebody that has it on
9 them. It can be transferred by sitting down at a table that
10 has gunshot residue on it. It can be transferred if you even
11 pick up a pen that has gunshot residue on it. Is that fair to
12 say?

13 A. It could. The last couple are very difficult to
14 imagine. But if you were to handle a weapon that had been
15 fired, that may well have an awful lot of primer residue on
16 it. Or if you were in the -- in an environment where a
17 shooting had taken place, then you might be able to pick up
18 primer residue compounds from various objects within that
19 locale.

20 Q. So if you had gone hunting with somebody or standing
21 near somebody that shot a gun, it's possible to get gunshot
22 residue on you, I assume.

23 A. If you were near somebody. If I were in front of a
24 person, and they pulled a weapon and fired it towards me, and
25 I put my hands up, for example, but didn't get struck by the
26 bullet, I could be literally covered in hundreds of those
27 particles of primer residue compounds and I never fired a gun.
28 Or if I were standing next to them, depending on the wind.

29 These primer residue compounds are so small, the best way

1 you can envision them if you picture somebody that smokes,
2 when they blow smoke out of their mouth that rolling motion
3 that the smoke will have, that would be very similar in
4 process to how these would be deposited.

5 And they are very light. They are not adhering all that
6 well. They are not sticky. By merely doing your daily
7 activities, you will remove them. And if per chance, you wash
8 your hand or whatever, chances are very good that they will
9 all be gone.

10 Q. So if a -- if a person had one, one particle of
11 gunshot residue on them, would you conclude that that person
12 shot a gun?

13 A. Absolutely not.

14 Q. Why not?

15 A. It's not -- to the best of my knowledge there is no
16 test whatsoever at this point in time that will state
17 positively that you have fired a weapon. Whether you have one
18 particle or 100 particles on you is irrelevant.

19 The fact is where they are, how they were deposited. If
20 there are six people and one, one of these people has fired a
21 weapon and the other five had nothing to do with them and you
22 went and checked them all, chances are very good five would
23 have nothing on them, one would have gunpowder or primer
24 residue on them. You can make the assumption.

25 It's an investigative tool. It is not an absolute given
26 if you have them on you. It means you were -- it does mean
27 you were near a gun that had been fired or you handled
28 something that was fired or you came into contact with
29 something that had residue on it. It does not mean that you

1 fired a weapon.

2 Q. Is it fair to say that a small, invisible, miniature
3 or spec, a tiny spec of gunshot residue is more indicative of
4 touching a surface, shaking a hand rather than actually
5 shooting a gun?

6 A. I don't know if it would be more indicative of, of
7 touching one. I would be leary of making any assumption.

8 And I say that based on the fact that I've submitted
9 these tests on a case of an individual in a closed vehicle who
10 committed suicide, and the car windows were all closed. And I
11 ran that test on them, and it came back negative.

12 So the fact that it isn't there or is there, I certainly
13 wouldn't draw an opinion one way or the other. If you were
14 going to make the assumption somebody fired, one is the lowest
15 number you can have, besides zero. You would have to take it
16 in that vein. It's a very limited amount of information you
17 are being given.

18 MR. CARTER: One moment, Your Honor.

19 We tender, Your Honor.

20 REDIRECT EXAMINATION BY MR. HILL:

21 Q. Mr. Balash, you were asked by defense counsel about
22 gunshot residue and primer residue. And I would just ask you
23 sir, if -- I think you indicated in your responses that molten
24 particles of a micron size, of the elements of barium and
25 antimony -- in other words, when they are specifically and
26 giewzed together, where did you say that the only known place
27 for that to come from.

28 A. I wanted to make one correction. I don't believe I
29 said molten at that point in time. But the only place that

1 I'm aware of that it comes from is through the firing of a
2 weapon, a center-fired weapon.

3 Q. Okay. And when what is -- what is -- what generates
4 a, I guess this is where I got the word molten, what generates
5 and make those two elements bond together or three, lead
6 barium and ant money or just barium and antimony when those
7 three elements are in a spherical shape? I think you said
8 what causes different elements to be combined in small, like
9 micron size and be bound together.

10 A. It needs complete pressure that comes from the
11 firing of a weapon.

12 Q. So the fact that it comes from the firing of a
13 weapon is in a sense unique, is it not?

14 A. It is. There is no other vehicle that anybody is
15 aware of at this point in time that will produce that
16 spherical form of barium and antimony. Barium and antimony
17 are not all that available in the general population.

18 However you did come into contact with them, however the
19 spherical form you won't. An example, you could get barium
20 what comes from a wooden stick. Wood will have barium in it.
21 You can get barium. It's on -- but it's in that form. They
22 are looking for what is unique. It's that uniqueness that
23 allows it to be identified as a particle from a firearm being
24 discharged.

25 Q. Okay. And I think you said these particles of
26 residue primer, residue are about the size of a micron.

27 A. That is correct, sir.

28 Q. And you I believe you indicated that you can't see
29 those with the naked eye.

1 A. No, you cannot, sir.

2 Q. So an officer wouldn't be able to look at a
3 suspect's hand and see particles on them.

4 A. Absolutely correct.

5 Q. Now, with regard to how long you would expect primer
6 residue to be on someone's hands, is there a generally
7 accepted in your field timeframe that you would most likely be
8 able to recover particles of gunshot or primer residue?

9 A. Yes, sir. There is -- there used to be a standard
10 rule of thumb that if you had waited beyond four hours to
11 obtain your test sample, that the laboratories that were doing
12 those samples wouldn't test them any longer. So you had to
13 obtain your sample within a four-hour window.

14 Q. So would it be fair to say then that if you -- the
15 sooner after you test it, the more likely it would be that you
16 recovered some, if some was there to begin with?

17 A. Absolutely.

18 Q. And why is that?

19 A. Well, this is such an easily removable object. If I
20 had 100 particles on the back of my hand alone and simply put
21 my hand in my pocket and drew it out, chances are 90 and above
22 of those particles would have been removed. That's how easy
23 it is to remove those items.

24 So any of your normal activities and obviously, if you
25 washed your hand, chances are very good you would remove all
26 of the particles. But it may adhere to the clothing as well
27 in and around the wrist area. That is why they sometimes
28 check clothing in that area. It doesn't take the same abuse
29 as would washing of hands, for example.

1 Q. So if somebody did have primer residue on their hand
2 land and they stuck them in their pockets or even rung their
3 hands or wiped them on their clothes, would that likely remove
4 the gunshot residue off the hand?

5 A. The vast majority of it. Yes.

6 Q. So at the end of four-hour period --

7 A. Chances are you wouldn't have any left just by
8 normal activity.

9 Q. Now you indicated that having gunshot residue on
10 your hand doesn't necessarily mean that you fired a weapon.

11 A. That's correct.

12 Q. But isn't it true that it certainly could be the
13 reason you had gunshot residue on your hand.

14 A. Certainly. It could be the reason, but it is not
15 exclusive to that alone.

16 Q. And if you fired a weapon, if you fired a .380 auto
17 caliber, a .380 auto caliber has got primer in it, doesn't it?

18 A. Yes, it does.

19 Q. If you fired it, it certainly could be on the back
20 of your right hand.

21 A. Well, it could be more than on just the back of your
22 right hand. It could be all the way up your wrist area. And
23 depending on your environment, this could be on your clothing
24 and face as well.

25 Q. Which certainly wouldn't be unusual to expect
26 gunshot residue or primer residue on your hand if you fired a
27 weapon?

28 A. It would not be unusual to expect primer residue.
29 It would be unusual to have gunpowder residue that. That is a

1 different material.

2 Q. Thank you, sir?

3 A. Your welcome.

4 THE COURT: Is he finally excused.

5 MR. EVANS: Yes, sir.

6 THE COURT: You are free go sir.

7 THE WITNESS: I am excused, Your Honor. Thank
8 you, sir.

9 (THE TESTIMONY ON NOVEMBER 30, 2007, WAS CONCLUDED.)

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State of Mississippi
v. Montgomery Circuit #2003-0071-CR
CURTIS G. FLOWERS
(Testimony from 12/01/07)

Volume III of IV
Pages 330 - 416

Joe Andrews - DIRECT
(ON DECEMBER 1, 2007, COURT WAS OPENED AND THE

TRIAL RESUMED IN OPEN COURT WITH ALL COUNSEL, THE DEFENDANT,
AND THE JURY ALL PRESENT.)

BY THE COURT: Will who will you have?

BY MR. EVANS: Joe Andrews.

BY THE COURT: Good morning.

JOE ANDREWS,

upon being called to testify as a witness by the State of
Mississippi, having first been duly sworn, testified as
follows, to-wit:

BY THE COURT: State your name, please, sir.

BY THE WITNESS: Joe Edward Andrews, Jr.

BY MR. EVANS: May I proceed, Your Honor?

BY THE COURT: Yes.

DIRECT EXAMINATION BY MR. EVANS:

Q. Mr. Andrews, how are you doing this morning?

A. Just fine, sir.

Q. How are you employed at this time?

A. At this time I am retired from the State of
Mississippi.

Q. And what position are you retired from?

A. I was employed for 28 years as a forensic
scientist at the Mississippi Crime Laboratory in Jackson.

Q. What were your primary duties?

A. My last position I held at the crime lab was the
position of regional lab manager, and part of my duties as a
regional lab manager was also to supervise the trace
evidence section of the laboratory which included the
analysis of such things as hairs, textile fibers, paints,

1 glass, gunshot residue and footwear and tire track
2 impressions.

3 Q. Can you tell the ladies and gentlemen of the jury
4 a little bit about your educational and experience
5 background that enabled you to do trace evidence
6 comparisons?

7 A. Yes, sir. I have a Bachelor of Science degree
8 from the University of Mississippi in forensic science. As
9 I have stated, I have worked 28 years at the Mississippi
10 Crime Laboratory where I received training in all the
11 different areas related to trace evidence. During that
12 period of time, I also was able to attend numerous schools,
13 seminars and classes sponsored by agencies such as the
14 Federal Bureau of Investigation on the examination and
15 identification of trace evidence materials.

16 Q. Have you been accepted as an expert in the field
17 of trace evidence in the State of Mississippi?

18 A. Yes, sir. I have.

19 Q. Can you give us an idea approximately how many
20 times?

21 A. Approximately 350 times during my career.

22 Q. And that includes in this particular district many
23 times; is that correct?

24 A. Yes, sir.

25 BY MR. EVANS: Your Honor, at this point I would
26 offer Mr. Andrews as an expert in the field, in the
27 forensic field of trace evidence.

28 BY MR. CARTER: No objection.

29 BY THE COURT: Okay. I accept him as an expert in

Joe Andrews - DIRECT

1 that field.

2 BY MR. EVANS:

3 Q. Mr. Andrews, were you asked in your official
4 capacity at the crime lab to do some examinations in
5 relationship to the case that we are up here on today?

6 A. Yes, sir. I was.

7 Q. Did one of those examinations have to do with some
8 bloody tracks that were left at the store?

9 A. Yes, sir.

10 Q. What were you presented? What were the first
11 things that you looked at in that case?

12 A. The first things were a series of photographs that
13 were collected from the crime scene by Melissa Schoene of
14 suspected partial footwear impressions on the floor inside
15 the store.

16 Q. I want to hand you Exhibits 47, 48, 49 and 50, and
17 I will ask you to look at these if you would, please, sir.

18 A. (Witness complies.)

19 Q. Can you tell us what those are?

20 A. Yes, sir. These are a series, these are the
21 series of photographs of suspected footwear impressions
22 collected by Ms. Schoene, and these are actual one to one
23 reproductions of those photographs. I can identify them by
24 the Mississippi Crime Laboratory case number, exhibit
25 number, and my initials that appears on the corner of each
26 one of the photographs.

27 Q. What is the significance of the one to one
28 reproduction?

29 A. The one to one reproduction, the photographs are

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1 collected using a scale or a ruler so that once you get the
2 photographs back to the crime laboratory, you can produce
3 enlargements so that the scale is exactly the proper size.
4 And that way you can use the photographs to do direct
5 comparisons back to a pair of shoes or suspected footwear to
6 determine whether or not that pair of shoes could have made
7 that exact impression.

8 Q. What were you able to tell just by looking at
9 those photographs?

10 A. Just looking at the series of photographs, they
11 all appear to be the same design, so they all appear to be
12 made by the same pair of shoes or the same design shoe. And
13 just looking at one of them in particular, we will take
14 State's Exhibit 48. Just from the amount of impression
15 there and the general shape of the impression, it appears to
16 be a partial footwear impression, more than likely the heel
17 area of the shoe.

18 BY MR. EVANS: Your Honor, may I pass these to the
19 jury while I proceed?

20 BY THE COURT: They have been admitted?

21 BY MR. EVANS: Yes, sir. They have.

22 BY THE COURT: Yes.

23 BY MR. EVANS:

24 Q. Mr. Andrews, while the jury is looking at those, I
25 want to continue with your examination. I want to next hand
26 you Exhibit 79A, and I will ask you if you have seen this
27 exhibit before?

28 A. Yes, sir. I have.

29 Q. What is that?

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1 A. This is a Fila brand shoe box that was submitted
2 to the laboratory. I can recognize it by my initials that I
3 placed on it at the time I examined it. And it has got
4 information listed on the end of the shoe box that would
5 indicate that it at one time contained a pair of M's Grant
6 Hill II MID shoes in size ten and a half.

7 Q. Were you asked to do anything in relationship to
8 that box that the Grant Hill shoes had been in?

9 A. The box was submitted as having been recovered
10 from, I believe the home where Curtis Flowers was staying or
11 living. And I was requested to examine particularly the
12 information on the end of the box to try to get information
13 as to whether or not the pair of shoes that was originally
14 sold in that box could have been a possible source of the
15 impressions left at the crime scene.

16 Q. Were you able to follow up on that?

17 A. Yes, sir. I was. After contacting the Fila
18 manufacturer, Fila provided me information as to the types
19 of shoes that would have been sold in this particular box,
20 and they also provided me a pair of outsoles which were
21 consistent with the outsole or the sole design that would
22 have been on the pair of shoes sold in this box.

23 Q. All right. Now I don't want to go all the way
24 into it at this point. But based upon that, were you able
25 to conduct your own examinations?

26 A. Yes, sir.

27 Q. I want to next hand you Exhibits 119 for
28 identification. I'm sorry. And 119A and 119B for
29 identification, 120 for identification, 123 for

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1 identification, 121 for identification, and 122 for
2 identification and ask that you examine these, please.

3 A. (Witness complies.)

4 Q. Starting with 119A and B, tell the ladies and
5 gentlemen of the jury what those are.

6 A. 119A and B are the pair of outsoles that were
7 provided to me by Fila as being the type of outsole that
8 would have been on the shoes that were originally sold in
9 the box marked State's Exhibit 79A.

10 Q. So that would be the exact type outsoles that
11 would have been on the original shoes that came in that box?

12 A. Yes, sir.

13 Q. Which is right and which is left? A or B?

14 A. 119B is the right outsole.

15 Q. So 119A is the left?

16 A. Yes, sir.

17 Q. What is Exhibit 120?

18 A. Exhibit 120 is a letter sent to Clyde Hill with
19 the District Attorney's Office from Mark Cane, who is Vice
20 President of Global Footwear for Fila, indicating that he is
21 sending this pair of outsoles which would have been the
22 outsoles in that box.

23 Q. And 121?

24 A. 121 is a copy of a catalog page that shows the
25 sole design and the upper design for the pair of shoes that
26 would have been sold in the box.

27 Q. 122?

28 A. 122 is the designer, is a photograph or a copy of
29 the designer drawing for the person that designed the

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1 outsole that is used in producing the molds that are used to
2 produce the outsoles.

3 Q. And do you have a 123?

4 A. Yes, sir. 123 is a transparency that I produced
5 in the laboratory using the shoe outsoles in 119A and 119B.

6 Q. And what is the other exhibit number that you have
7 up there? Was that all of them?

8 A. That's all of them, sir.

9 Q. Okay. And were you able to rely on all of these
10 exhibits that you have just described in the normal course
11 of your operation at the lab in conducting this examination?

12 A. Yes, sir.

13 BY MR. EVANS: I offer Exhibits 119A, 119B, 120,
14 121, 122, and 123 into evidence, Your Honor.

15 BY MR. CARTER: No objection.

16 BY THE COURT: Let them be all be admitted.

17 (THE FOLLOWING SIX STATE'S EXHIBITS THAT WERE
18 PREVIOUSLY MARKED FOR IDENTIFICATION WERE NOW ADMITTED INTO
19 EVIDENCE: LEFT OUTSOLE OF FILA SHOE AS EXHIBIT S-119A,
20 RIGHT OUTSOLE OF FILA SHOE AS EXHIBIT S-119B, COVER LETTER
21 OF 12/18/03 FROM FILA AS EXHIBIT S-120, FILA CATALOG SHEET
22 AS EXHIBIT S-121, ENGINEERING DESIGN OF FILA SHOE SOLE AS
23 EXHIBIT S-122, AND TRANSPARENCY WITH SHOE PRINT IMPRESSION
24 AS EXHIBIT S-123.)

25 BY MR. EVANS:

26 Q. Mr. Andrews, you were asked as an expert to make a
27 determination if the shoes that had been purchased in the
28 box found at Curtis Flowers' house could have left the
29 bloody tracks; is that correct?

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1 A. Yes, sir.

2 Q. What steps did you use to make any type of
3 determination?

4 A. First of all, once I received the outsoles, I used
5 the outsoles to produce a series of test impressions,
6 particularly of the heel area of both the left and the right
7 outsole that were submitted. I made those test impressions
8 basically using a process called inkless ink, where we have
9 a chemical that is applied to the sole of the shoe, and then
10 it's pressed against a piece of specially treated paper.
11 And once it, the chemical comes into combination with the
12 paper, it produces a visible impression.

13 Once I had those test impressions made, I used the
14 actual impression to produce the transparency that has now
15 been marked as State's Exhibit 123. And by the
16 transparency, it allows me to actually take the transparency
17 and apply it directly over the photographs to compare to see
18 if, first of all, the impressions found at the crime scene
19 have the same class characteristics.

20 When we do footwear or tire track examinations, we
21 look first for class characteristics. These are the things,
22 the overall size, shape and spacings of designs that are not
23 unique to a particular shoe, but are characteristic of a
24 particular size or brand of shoe.

25 In this particular case because we knew that we
26 were dealing with a Fila Grant Hill II, we were looking to
27 make sure all the characteristics that were present in the
28 test impressions could be seen in the same relationship in
29 the photographs.

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1 Q. Did you, in fact, compare all of those things that
2 you have just said?

3 A. Yes, sir. I did.

4 Q. Were you able to make any determination from the
5 bloody tracks that were left at Tardy Furniture as to
6 whether they were, in fact, made by a pair of shoes that
7 were the same type of shoes that came out of the box found
8 at Curtis Flowers' house?

9 A. Yes, sir. The series of photographs in State's
10 Exhibits 47, 48, 49 and 50 are all appear to be made by a
11 right heel, and they are all consistent in size, shape and
12 design with a right heel impression made by the outsole in
13 State's Exhibit 119B.

14 Q. So you are saying that the bloody shoe tracks were
15 made by the right shoe of the exact same type of shoes that
16 came out of the box found in Curtis Flowers' house?

17 A. Yes, sir. That's correct.

18 Q. What size shoes came in that box?

19 A. That box is marked as being size ten and a half.

20 Q. And were the impressions that you found identical
21 with the overlay from a size ten and a half impression?

22 A. Yes, sir. They were.

23 BY MR. EVANS: Your Honor, may I have the witness
24 step down?

25 BY THE COURT: Yes, sir.

26 BY MR. EVANS:

27 Q. If you would, bring the overlay and the best
28 photograph.

29 A. (Witness complies and steps in front of jury box.)

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1 Q. If you would, using the overlay which is what
2 exhibit number?

3 A. State's Exhibit 123.

4 Q. And the photograph that is what exhibit number?

5 A. State's Exhibit 48.

6 Q. Show the ladies and gentlemen of the jury how you
7 were able to overlay that and determine that the shoes that
8 came out of that box or an exact same type shoe made that
9 bloody impression?

10 A. First of all, looking at the photograph, I am
11 holding the photograph so that it is oriented where the
12 impressions are more or less oriented up and down. And the
13 first thing you can see is you can see the general outline
14 of the outsole, and you can see basic outline of the heel.
15 You also see what appears to be an "A" in the bottom of the
16 impression which looking at the outsole itself, you see that
17 it basically kind of looks like an "A" with a squiggly 2 on
18 the top of it. But it more or less has the outline of a
19 stylized "A". And that was part of the design that has to
20 do with the fact that it's a Grant Hill. It is actually
21 kind of a stylized "H".

22 You can also see the Chevron pattern in the
23 photograph, which is a series of the up and down lines,
24 which are also visible in the actual outsole itself, but
25 also reproduced in the transparency that I produced using
26 that outsole. If you look real closely in the photograph,
27 at the very top of the impression you see part of the
28 stylized "F" that is part of the Fila name that is actually
29 in the outsole itself.

Joe Andrews - DIRECT

1 But in doing the actual comparison to compare
2 between the outsole impressions and the photographs, you
3 actually lay your transparency over the top, and what you
4 are looking for are do all the elements line up. Different
5 size shoes, to make up the difference in the size and the
6 width of the outsole, manufacturers will either change the
7 spacing or the size of the different elements that make up
8 the outsole.

9 So if you have something that say is a size 12,
10 either the "A" itself will be slightly larger, or the
11 spacing between the "A" and the outline around the "A" would
12 be different to make up the differences in -- you have
13 either got to spread the elements out, or you have got to
14 make the elements larger to cover a bigger outsole. In a
15 smaller outsole, you have either got to tighten the spacing
16 or make the elements smaller so that they will fit on the
17 outsole.

18 In this particular case all the different
19 elemental designs line up exactly between the test
20 impressions that I made at the crime laboratory and the
21 photographs collected at the crime scene.

22 Q. All right. Thank you. You can take your seat
23 again.

24 BY MR. EVANS: Your Honor, may I pass these three
25 exhibits to the jury?

26 BY THE COURT: They have been admitted. You can
27 do that.

28 (State's Exhibits S-119A, S-48 and S-123 were
29 passed to the jury.)

Joe Andrews - DIRECT

1 BY MR. EVANS:

2 Q. Mr. Andrews, can you say to a degree of scientific
3 certainty that in your opinion it is a 100 percent
4 probability that the bloody shoe impressions were left by
5 the same type of shoe that would have been purchased in that
6 box?

7 A. The pair of shoes, based on my examination of the
8 outsoles that were submitted to me by Fila, cannot be
9 excluded as a possible source of the impressions left at the
10 crime scene.

11 Q. So there is nothing inconsistent?

12 A. There is no, there are no inconsistencies between
13 the impressions at the scene and the outsoles that I
14 examined.

15 Q. You were also sent a pair of shoes that I think
16 the Defendant had on at some point before you knew what the
17 pattern looked like. Is that correct?

18 A. There were a pair of shoes submitted to the crime
19 laboratory that were submitted as having been collected from
20 Curtis Flowers, I believe at the time of his arrest.

21 Q. All right, and I will hand you Exhibit 125 for
22 identification and ask if you can identify this?

23 A. Yes, sir. I can.

24 Q. This is a pair of Nike Flight tennis shoes that is
25 marked on the bag as belonging to Curtis Flowers, taken the
26 23rd of July, 1996, at 1615 hours. And I believe it has
27 Jack Matthews' initials on it. I can identify it by the
28 Mississippi Crime Laboratory case number and exhibit number
29 and my initials that are both on the bag and on the shoes

Joe Andrews - DIRECT

1 themselves that I placed there at the time I did my
2 examination.

3 BY MR. EVANS: Your Honor, I offer this exhibit
4 into evidence.

5 BY MR. CARTER: No objection.

6 BY THE COURT: Let it be admitted.

7 BY MR. EVANS: I would offer Exhibit 125, 125A and
8 125B all into evidence, Your Honor. I believe each
9 shoe was individually marked inside the bag.

10 BY THE COURT: Any objection to that?

11 BY MR. CARTER: No objection.

12 (SACK CONTAINING NIKE TENNIS SHOES, LEFT SHOE, AND
13 RIGHT SHOE, ALL PREVIOUSLY MARKED AS STATE'S EXHIBITS S-125,
14 S-125A AND S-125B RESPECTIVELY FOR IDENTIFICATION, WERE NOW
15 RECEIVED IN EVIDENCE.)

16 BY MR. EVANS:

17 Q. Mr. Andrews, once you looked at the photos of the
18 bloody shoe tracks, was there any problem eliminating those
19 shoes as having made them?

20 A. No, sir. If you look at the outsole on the bottom
21 of this pair of Nike Flight tennis shoes, you can tell
22 immediately that it has a completely different outsole
23 design from the impressions collected at the crime scene.

24 Q. All right. Now those have been identified to you
25 as shoes actually taken from off of the Defendant's feet; is
26 that correct?

27 A. Yes, sir.

28 Q. What size are those shoes?

29 A. 10 1/2's.

Joe Andrews - DIRECT

1 Q. Were you also asked in your expert capacity in
2 trace elements to look at a, what is normally called a
3 gunshot residue test kit?

4 A. Yes, sir. I was.

5 Q. I want to hand you Exhibit 94 and ask you to
6 examine this if you would.

7 A. (Witness complies.)

8 Q. Can you just generally to start with, tell us what
9 that is.

10 A. Yes, sir. This is a Mississippi Crime Laboratory
11 gunshot residue evidence collection kit. It's a
12 standardized kit used by police officers to collect samples
13 from the hands of persons believed to have been involved in
14 a crime involving firearms, either having discharged a
15 firearm or handling a firearm.

16 Q. What would be -- and that would be the purpose of
17 the test being performed; is that correct?

18 A. Yes, sir.

19 Q. What tests were you asked to conduct on that kit?

20 A. The kit was submitted to the laboratory and asked
21 to be examined for the presence of any gunshot residue that
22 might be present on any of the samples in the kit.

23 Q. Now procedurally, is there any accepted standard
24 in your field as to how long after a person fired a gun that
25 you would expect to still be able to find gunshot residue on
26 their hands?

27 A. Yes, sir. There is. If I could explain just
28 briefly what gunshot residue is and why you test for it?

29 Q. Sure.

Joe Andrews - DIRECT

1 A. Gunshot residue tested by trace evidence at the
2 Mississippi Crime Laboratory is composed of, primarily of
3 components from the primer composition used in modern
4 ammunition. You have a primer cup located in the bottom of
5 most cartridge cases that the firing pin strikes, and upon
6 the firing pin striking the primer cup, it causes a small
7 explosion of that elemental composition that then initiates
8 the ignition of the powder that is inside the cartridge
9 case. And that explosion is what forces the projectile out
10 of the gun.

11 During that process of that ignition procedure,
12 components from the primer composition are vaporized into
13 gases, and those gases will escape from any opening in the
14 weapon. And then once that gas is exposed to the cooler
15 surrounding atmosphere, those gaseous materials will
16 condense back into small microscopic particles that can be
17 deposited on surfaces in close proximity to that firearm.

18 We test mainly hand samples from people believed
19 to have been involved in such cases. And the two areas we
20 test on the hands are the backs of the hands and the palms
21 of the hands. And when we talk about the back of the hand,
22 we are talking about the area along the outside of the index
23 finger, the web of the hand between the index finger and the
24 thumb, and the top of the thumb, which if you hold a handgun
25 in a normal fashion, these would be the areas of the hand
26 most likely to be exposed to residue being emitted from a
27 handgun.

28 We then test the palms of the hands, which
29 includes the palm surfaces and the inside of the fingers, to

Joe Andrews - DIRECT

1 determine if there is any residue that might have been
2 deposited from handling a firearm or some other object that
3 has residue on its surface. And we do that for both the
4 right and the left hand. So a standard kit will have four
5 samples.

6 Because of the way gunshot residue is deposited
7 and because it is microscopic and particle-like in nature,
8 tests have shown that once particles are deposited on the
9 hands of a living individual, they begin to immediately be
10 lost, just through normal activity. Any normal activity
11 where you brush your hands or rub up against something will
12 start removing particles from the hand. And most studies
13 have shown that after four hours the likelihood of finding
14 particles on the hands of someone who has discharged a
15 weapon are almost nonexistent. So normally we encourage
16 officers not to collect samples if more than four hours have
17 passed between the time of suspected shooting and the time
18 of collection of samples.

19 Q. So if in this case you were advised that it had
20 been approximately three and a half or so hours from the
21 time of the crime, this would be getting close to the point
22 where you wouldn't expect to find many particles anyway; is
23 that correct?

24 A. Yes, sir. It is very close to the normal cutoff
25 time where the likelihood of finding particles is extremely
26 unlikely.

27 Q. If I fired a .380 semi-automatic weapon with my
28 right hand, where would you be more likely to expect to find
29 particles?

Joe Andrews - DIRECT

1 A. As I stated earlier, if you hold a handgun in the
2 normal fashion in your right hand, you would normally, you
3 would expect most of the residue to be deposited on the
4 hands on the top outside of the index finger, the web area
5 between the index finger and the thumb and the top of the
6 thumb.

7 Q. All right. Now the kit that you have has four
8 vials in it; is that correct?

9 A. Yes, sir.

10 Q. And they are taken from the back of the right
11 hand, the back of the left hand, the palm of the right hand,
12 and the palm of the left hand; is that correct?

13 A. Yes, sir. That's correct.

14 Q. Are those kits labeled so that you know which came
15 from which location?

16 A. Yes, sir, and if I can just demonstrate just one
17 of the vials. Each vial is marked with the area that it is
18 tended to be used to sample from. This particular vial is
19 marked left palm.

20 Q. Now before we go into your findings, I want to ask
21 you a couple more questions. As far as primer gunshot
22 residue, what elements compose that substance?

23 A. Different manufacturers use a variety of different
24 chemical compositions in their primer composition, but the
25 three elements that are present in all primer compositions
26 include the elements lead, barium and antimony. Gunshot
27 residue, because of the technique that we are using, we use
28 a technique called scanning electron microscopy with energy
29 dispersive x-ray analysis. And what this allows us to do is

Joe Andrews - DIRECT

1 look for microscopic particles on the surface of the sample
2 stub that have a characteristic morphology.

3 As I testified earlier, these gases, as they
4 escape from the weapon, began to cool almost immediately,
5 and as those gases cool, they condense back into small
6 spherical molten particles. So what you are looking for are
7 basically little small round particles that have a kind of a
8 molten or melted appearance, and then the energy dispersive
9 x-ray analyzer allows us to examine each one of those
10 particles and determine its elemental composition.

11 And the three elements that have been found to be
12 unique to gunshot residue are the elements lead, barium and
13 antimony. So if we can find particles that have that
14 characteristic morphology and shape and have the unique
15 elemental composition containing lead, barium and antimony,
16 it allows us to positively identify that particle as gunshot
17 residue to the exclusion of all other environmental sources.

18 Q. Does anything other than gunshot primer residue
19 leave that exact substance that you are talking about?

20 A. No, sir. There are a variety of things that will
21 contain some or part, but gunshot residue has been found to
22 be unique in its elemental composition with that molten
23 spherical appearance.

24 Q. You were asked to test these four containers and
25 see if, in fact, there was any gunshot residue on any of
26 them; is that correct?

27 A. Yes, sir. I was.

28 Q. Did you find gunshot residue?

29 A. Yes, sir. I did.

Joe Andrews - DIRECT - CROSS

1 Q. And where did you find it?

2 A. I identified one particle of gunshot residue on
3 the sample submitted as being from the back of the right
4 hand of Curtis Flowers.

5 Q. Can you say that you are 100 percent certain that
6 there was gunshot residue on the back right hand of Curtis
7 Flowers?

8 A. That single particle is enough for me to
9 positively identify it as gunshot residue to the exclusion
10 of all other environmental material.

11 Q. After approximately three and a half hours, is
12 there anything inconsistent with being able to find just one
13 particle?

14 A. No, sir.

15 BY MR. EVANS: One moment, Your Honor.

16 (State's Counsel confer.)

17 BY MR. EVANS: Your Honor, I will tender the
18 witness.

19 BY MR. CARTER: One moment, Your Honor.

20 CROSS-EXAMINATION BY MR. CARTER:

21 Q. Mr. Andrews, you don't know how Curtis Flowers got
22 that one particle of gunshot residue on his hand, do you?

23 A. No, sir.

24 Q. And one particle of gunshot residue is the
25 smallest amount that you can have; isn't that correct?

26 A. Yes, sir.

27 Q. Now depending on the gun and the environment that
28 a person shoots a gun in, gunshot residue can actually be
29 over another part of the hand; is that correct?

Joe Andrews - CROSS

1 A. Yes, sir. It can.

2 Q. It can actually be on your sleeve?

3 A. Oh, yes, sir.

4 Q. It can be on your jacket or coat if you have one
5 on, depending on the environment?

6 A. As I stated earlier, these gases escape from the
7 weapon and condense back on anything in close proximity to
8 the weapon. So it is very likely that a person that
9 discharged a gun would have residue deposited on several
10 areas of his body.

11 Q. Right. Now this four hour window of opportunity
12 for gunpowder residue to likely be lost or wiped off, this
13 is no -- in other words, isn't it possible that a person,
14 depending on what they do after they shoot a gun, could have
15 gunpowder residue on them for five hours, six hours, seven
16 hours? Say you shoot a gun and you lay down and go to
17 sleep. You could have gunpowder residue on you for 12
18 hours. Is that possible?

19 A. Yes, sir. In fact, I have worked a case very
20 similar to what you described. The suspect supposedly fired
21 a weapon, went home, went immediately to bed. The police
22 arrested him the next morning, collected samples, and he
23 still had residue on his hands. Activity plays a very big
24 role in how quickly you lose particles from the hand.

25 Q. All right, so that four hour rule is just a
26 suggestion?

27 A. It is not carved in stone, but study after study
28 has shown that if you look at the total quantity of residue
29 that is deposited over a period of approximately four hours,

Joe Andrews - CROSS

1 it goes from its maximum down to a very minimal amount. And
2 based on a lot of different factors, you can extend that
3 time period some. You know, if they weren't very active, if
4 they haven't done a lot of things that would remove
5 particles; but at the same time you can also shorten that
6 period. If the person washes their hands immediately after
7 they discharge a weapon, they will basically remove all of
8 the particles from their hands.

9 So the four hours is just a general rule for how
10 likely it is you will find residue on a person that you know
11 has fired a weapon after four hours.

12 Q. Okay. Now you can get gunshot residue on your
13 hand by being around a person who shot a gun; is that
14 correct?

15 A. Yes, sir. I have also worked cases where a
16 suspect was standing right beside the person that fired the
17 gun, and he had residue on his person because he was close
18 enough to the weapon that the residue deposited on him.

19 Q. And you can get gunshot residue from another
20 person who had gunshot residue on them even if you were not
21 standing near them when they shot a gun; is that correct?

22 A. It is possible to transfer residue from one person
23 to another if circumstances are right.

24 Q. And it is rather easy to transfer it from one
25 person to another if the circumstances are right; is that
26 correct?

27 A. Yes, sir.

28 Q. So a person having gunshot residue on them,
29 especially one particle, it would be unscientific, unfair

Joe Andrews - CROSS

1 and unreasonable to assume with 100 percent assurance that a
2 person shot a gun; is that correct?

3 A. Just to clarify, normally if you find gunshot
4 residue, it allows you to make one of three conclusions:
5 Either that person discharged a weapon; they were close,
6 they were in close proximity to a weapon when it was
7 discharged; or they have handled an object that had residue
8 on its surface. And by object, that could be if you touch
9 another person that has residue on them, then you could get
10 residue that way. So those are the three conclusions you
11 can draw from the presence of gunshot residue.

12 Q. So if another person had gunshot residue on their
13 hand, you could get it that way, couldn't you?

14 A. It's possible; yes, sir.

15 Q. Or if another person had gunshot residue on their
16 clothing and you hugged them, it is possible to transfer it;
17 would that be fair to say?

18 A. It's possible.

19 Q. Or touched them?

20 A. It's possible. Yes, sir.

21 Q. Now those outsoles you have; isn't it a fact that
22 Fila told you that they made over 600,000 pairs of shoes
23 that could have made those imprints at Tardy's, or something
24 of that nature?

25 A. Just once again to clarify; one of the questions I
26 asked the representatives of Fila were how many different
27 shoes were produced that used this outsole pattern as part
28 of the makeup of that particular shoe. They sent me a list
29 of all the styles of Grant Hills II's and how many were

Joe Andrews - CROSS

1 produced and shipped of each one of those styles. The
2 question you are asking, based on the manufacturer's
3 criteria for quality control, the difference for Fila, the
4 difference between a size ten and a half outsole and a size
5 11, which is a half size larger, is three-sixteenths of an
6 inch in overall length. That's the industry standard for
7 half sizes is approximately three-sixteenths of an inch.
8 Their quality control from one size to another allows for a
9 three-sixteenths of an inch variance from what the standard
10 is.

11 So it is possible to have an outsole on a size ten
12 and a half that is the same size as the outsole on a size
13 11. There can be some overlap. Now not every size 11 is
14 going to have the same size outsole as a size ten and a
15 half. Not every ten is going to have the same size outsole
16 as a ten and a half. But there can be some ten's that would
17 have the same size outsole. There can be some 11's that
18 have the same outsole.

19 So Fila provided to me the numbers of soles
20 shipped or pairs of shoes shipped for both 10's, 10 1/2's
21 and 11's, and the total quantify of all those added together
22 was approximately 620,000 pairs.

23 Q. So a 10 1/2 could have left that -- I'm sorry, a
24 size 10 could have left that imprint at Tardy's. A size
25 10 1/2 could have left that imprint at Tardy's, and a
26 size 11 could have left those imprints at Tardy's. Is that
27 fair to say?

28 A. Because of the information Fila provided to me
29 that they do allow that three-sixteenths of an inch

Joe Andrews - CROSS

1 variance, I cannot rule out the possibility that you could
2 go out and find a size 11 in that same design that might
3 have the same size outsole. Or I might could go out and
4 find a size 10 that had that same size outsole.

5 Q. As well, okay. Now when you say you cannot rule
6 out that a shoe from that box didn't make that imprint, when
7 you say you cannot rule out or exclude, you are not also
8 saying for a fact with 100 percent certainty that whatever
9 shoe was in that box made that imprint. Is that correct?

10 A. No, sir. In order for me to make a positive
11 identification, I would actually have to have the pair of
12 shoes so that I could look for the individual
13 characteristics that would allow me to make a positive
14 identification.

15 BY MR. CARTER: One moment, Your Honor.

16 (Defense Counsel confer.)

17 Q. Now you are not a latent print examiner, are you?

18 A. No, sir.

19 Q. Okay. So you didn't, as a result, you didn't try
20 to get any prints from that shoe box, did you?

21 A. No, sir. I believe it was examined at the
22 laboratory, but that was in another section.

23 Q. Were you able to tell by those footwear
24 impressions whether that person was going, headed into the
25 store or headed out of the store?

26 A. Based on the photographs that were submitted to
27 me, there was no orientation on the photographs as far as
28 direction toward the front of the store or the back of the
29 store. That would have been something that would have been

Joe Andrews - REDIRECT
1 documented by the crime scene examiner.

2 BY MR. CARTER: We tender.

3 REDIRECT EXAMINATION BY MR. EVANS:

4 Q. Mr. Andrews, would you consider it good police
5 work for an officer to attempt to get a gunshot residue test
6 kit within four hours of somebody that they thought had
7 committed a murder?

8 A. Yes, sir.

9 Q. Why would an officer want to do that?

10 A. As I stated earlier, you collect gunshot residue
11 samples from the hands of individuals that you believe might
12 have been involved in a crime involving a firearm.

13 BY MR. CARTER: Your Honor, he asked him what
14 would an officer do, and I object to it unless he knows
15 why an officer would do it or has some background as a
16 police officer.

17 BY THE COURT: Overruled.

18 BY MR. EVANS:

19 Q. Do you train officers? Have you in the past
20 trained officers and been present when officers were trained
21 on using gunshot residue kits?

22 A. Oh, yes, sir. I have conducted numerous classes
23 in the State of Mississippi on the proper collection of all
24 different types of trace evidence including collecting
25 gunshot residue samples and the procedures used in
26 collecting those samples.

27 Q. Are officers taught that if they find that a
28 person is in their custody that they have access to that
29 they think has killed someone within four hours, that they

Joe Andrews - REDIRECT

1 should take a gunshot residue kit?

2 A. If a firearm was involved, yes, sir; they are
3 encouraged to collect those types of samples.

4 Q. Is it, in fact, a good indicator that someone has
5 fired a firearm?

6 A. That's the main purpose of conducting the test.
7 Yes, sir.

8 Q. Are you 100 percent certain that the test kit
9 shows that Curtis Flowers had gunshot residue on his right
10 hand?

11 A. Yes, sir.

12 Q. And you have looked at the bloody shoe tracks that
13 were left in the store, and you have compared the Fila
14 tennis shoe box that came out of the house Curtis Flowers
15 was living in; is that correct?

16 A. Yes, sir.

17 Q. Are you 100 percent certain that the type of shoes
18 that would have been purchased in that box are consistent
19 with the bloody shoe tracks?

20 A. Yes, sir. I am.

21 BY MR. EVANS: Nothing further, Your Honor.

22 BY THE COURT: Is he finally excused?

23 BY MR. EVANS: Yes, sir.

24 BY MR. CARTER: Yes, sir.

25 BY THE COURT: Mr. Andrews, you are free to go.

26 BY THE WITNESS: Thank you, Judge.

27 WITNESS EXCUSED

28 BY THE COURT: We are going to take just a short
29 break just a second. It will be short. We will start

1 Elaine Gholston - DIRECT
back in a minute.

2 (FOLLOWING A BRIEF MORNING RECESS ON DECEMBER 1,
3 2007, PROCEEDINGS CONTINUED IN OPEN COURT WITH ALL COUNSEL
4 AND THE DEFENDANT PRESENT.)

5 BY THE COURT: Who do you want next?

6 BY MR. EVANS: Elaine Gholston.

7 BY THE COURT: Okay, I am ready.

8 (JURORS ENTER THE COURTROOM.)

9 ELAINE GHOLSTON,
10 upon being called to testify as a witness by the State of
11 Mississippi, having first been duly sworn, testified as
12 follows, to-wit:

13 BY THE COURT: State your name, please.

14 BY THE WITNESS: Elaine Gholston.

15 BY THE COURT: I'm sitting this close to you, and
16 I can hardly hear you. That lady has got to hear you,
17 and that microphone won't amplify. We are going to
18 rely on your voice.

19 BY MR. HILL: May I proceed, Your Honor?

20 BY THE COURT: Yes.

21 DIRECT EXAMINATION BY MR. HILL:

22 Q. As the Judge was telling you, we have got to be
23 able to hear you this far away, so I'm going to ask if you
24 will speak really loud, as loud as you can maybe in a
25 speaking voice so we can all hear you. Ms. Gholston, I want
26 to direct your attention back to the year 1996 and ask if
27 you remember in that year the day of the murders at Tardy
28 Furniture store?

29 A. (No immediate response.)

Elaine Gholston - DIRECT

1 Q. Do you remember the time of the Tardy Furniture
2 murders?

3 A. Yes, sir.

4 Q. Okay. Where were you living when that crime
5 occurred at Tardy Furniture?

6 A. 703B McNutt Drive.

7 Q. 703B?

8 A. McNutt Drive.

9 Q. Now did you know anybody at that time; that is,
10 back in July of 1996, and specifically on July 16, 1996, the
11 time of the murders, the day of the murders, did you know
12 anybody at that time that was named Curtis Flowers?

13 A. Yes, sir.

14 Q. And where did you live in relation to where he
15 lived?

16 A. He lived across the street from me.

17 Q. Do you know his address across the street?

18 A. I think it was 703A, something like that.

19 Q. Okay. But it was across the street?

20 A. Yes, sir.

21 Q. Now is that an apartment complex or duplexes
22 there?

23 A. Yes, sir.

24 Q. And he was directly across the street from you?

25 A. Yes, sir.

26 Q. And did you get to know him at that time, or had
27 you known him before, or describe for us if you would--

28 A. -- I had known him before I had moved to Winona
29 and when I moved to Winona.

Elaine Gholston - DIRECT

1 Q. Okay, and when you moved to Winona and lived
2 across the street, did you get to know him?

3 A. We just didn't conversate as much, but I knew him.

4 Q. When you saw him, did you recognize him?

5 A. Yes, I did.

6 Q. Okay. Do you see that person that you knew as
7 Curtis Flowers here in the courtroom today?

8 A. Yes, sir.

9 Q. Would you point to him, please.

10 A. (Witness points.)

11 BY MR. HILL: Your Honor, may we have the court
12 record reflect that the witness Elaine Gholston has
13 identified the Defendant Curtis Flowers?

14 BY THE COURT: Let the record reflect that.

15 BY MR. HILL:

16 Q. Now Ms. Gholston, did you have occasion to see
17 Curtis Flowers on the day of the Tardy murders, July 16,
18 1996?

19 A. Yes, sir.

20 Q. What time of the day was it when you saw him?

21 A. Around about 6:45 in the morning.

22 Q. Okay. And what was he doing when you saw him?

23 A. Standing across in his yard smoking a cigarette.

24 Q. And at that time, that is, up to July the 16th, in
25 the months say June, July, the days, weeks up to July the
26 16th, the day of the Tardy murders, did you ever have
27 occasion to see whether or not he had any kind of tennis
28 shoes?

29 A. Yes, sir.

Gholston - DIRECT - CROSS

1 Q. Could you tell the ladies and gentlemen of the
2 jury whether you know what Fila Grant Hill tennis shoes
3 looked like back at that time?

4 A. They was most white, and red, white and blue.

5 Q. Did Curtis Flowers have a pair of Fila Grant Hill
6 shoes?

7 A. Yes, sir.

8 Q. Did you ever see him wearing those Fila Grant Hill
9 shoes?

10 A. Yes, sir.

11 Q. And was that on more than one occasion that you
12 saw him wearing those shoes?

13 A. Probably about twice. About two, I think; yeah.

14 Q. Did you ever see him wearing those shoes after the
15 murders?

16 A. No, sir.

17 BY MR. HILL: Tender the witness, Your Honor.

18 CROSS-EXAMINATION BY MR. CARTER:

19 Q. Ms. Gholston, would you tell the ladies and
20 gentlemen of the jury when you saw Mr. Flowers with Grant
21 Hill Fila shoes on?

22 A. Maybe it was prior of the murder.

23 Q. What?

24 A. It was right before the murders.

25 Q. Right when before?

26 A. Probably months, months before the murder.

27 Q. Okay. Do you have any kids?

28 A. Yes, I do. I have a daughter.

29 Q. A daughter?

Elaine Gholston - CROSS

1 A. Uh-hum.

2 Q. Did you personally have any Grant Hill Fila shoes?

3 A. No, sir.

4 Q. Now isn't it a fact that ordinarily we don't go
5 around looking at people's feet unless there is some reason
6 to?

7 A. Because they was very popular back then.

8 Q. Where did you see -- where was Mr. Flowers when
9 you saw him with these Grant Hills?

10 A. At his home.

11 Q. You visited his house?

12 A. No, I was like outside, and they were so
13 noticeable because they was so popular back then. I knew
14 that those was Grant Hill tennis shoes.

15 Q. Okay, now they made more than one pair of Grant
16 Hill tennis shoes. You think they made only one, one type?
17 One style?

18 A. No, I don't think it was just one style, but it
19 was just those are the ones that I noticed, the Grant Hill
20 Filas.

21 Q. Okay, how did you know exactly what kind he had?

22 A. They was mostly white, and red, white and blue.

23 Q. Okay, but-- so there were no other Grant Hill Fila
24 shoes that were red and white and blue? Is that your
25 testimony?

26 A. No. Well, the ones that he had on, those was the
27 ones that was the popular ones that everybody was wearing,
28 like I said.

29 Q. Did you examine those shoes that Mr. Flowers you

Elaine Gholston - CROSS

1 claim he had on?

2 A. They was noticeable.

3 Q. Noticeable from where? Where was he when you saw
4 them?

5 A. I was in my yard.

6 Q. Okay.

7 A. And he was outside.

8 Q. Okay, and that is -- he was outside where?

9 A. He was outside in his yard.

10 Q. Okay. Now there is a big street that runs between
11 your yard and his yard; is that correct?

12 A. Uh-hum.

13 Q. Now you are telling the jury that you saw him with
14 some shoes on that you know beyond any doubt with a
15 100 percent certainty that they were Grant Hill Fila II's,
16 that particular design? Is that what you are telling them?

17 A. Yes.

18 Q. And you are telling the jury that you got close
19 enough to read what was actually on those shoes?

20 A. I know them.

21 Q. How do you know them?

22 A. Because I know Grant Hill Fila's tennis shoes at
23 that time because they was popular tennis shoes.

24 Q. Okay, so those particular shoes, did they have
25 some other name?

26 A. Grant Hill Fila.

27 Q. Is that the complete name, Grant Hill Fila shoes?
28 Is that the complete name?

29 A. Grant Hill Filas.

Elaine Gholston - CROSS

1 Q. Okay. And it wasn't Grant Hill Fila II's?

2 A. It might have been I and II's, but these here was
3 II's. Grant Hill Fila II.

4 Q. Okay, now you didn't tell -- and you were able to
5 from across the street, look at them and know that they were
6 that particular design and not any other design?

7 A. No other design.

8 Q. How did you exclude any other design?

9 A. I would exclude them, like I'm telling you. They
10 was white and red, white and blue.

11 Q. Okay. Did you ever get close enough to -- did you
12 ever go to Mr. Flowers' house, inside his house?

13 A. No, I didn't.

14 Q. Were you ever standing up talking to Mr. Flowers
15 when he had those shoes on?

16 A. No, I wasn't.

17 Q. Did you ever purchase any Grant Hill Fila II's?

18 A. No, I didn't.

19 Q. One moment. Now you are not telling the jury that
20 Mr. Flowers, you saw Mr. Flowers with those shoes on the day
21 that the killing took place; is that correct?

22 A. Yes, sir.

23 Q. Huh?

24 A. Yes, sir.

25 Q. Let me make sure I'm not confused. You are saying
26 you saw him with, you believe you saw him with some shoes on
27 like that, but it was at some point prior to the day that
28 the people got killed at Tardy's? Is that what you are
29 saying?

Elaine Gholston - CROSS

1 A. Yes, sir.

2 Q. And you don't know exactly what day it was?

3 A. No, sir.

4 Q. Ms. Gholston, are you aware that a reward was
5 offered?

6 A. No, sir.

7 Q. To people coming forth and giving information
8 about?

9 A. (Witness shakes her head.)

10 Q. You never heard of that?

11 A. No, sir.

12 Q. Never saw any signs, never read it in the paper or
13 saw it mentioned on TV?

14 A. No, sir.

15 BY MR. CARTER: One moment.

16 (Defense Counsel confer.)

17 Q. On these two occasions that you saw Mr. Flowers
18 with those shoes on, were you in your yard both times?

19 A. Yes, sir.

20 Q. And what were you doing in your yard?

21 A. Just cleaning up usual, you know, raking.

22 Q. What was Mr. Flowers doing in his yard?

23 A. Standing over there at his vehicle one time, and
24 standing over there, just standing out in the yard.

25 Q. What else did Mr. Flowers have on the first time
26 you saw him with those shoes?

27 A. I don't remember.

28 Q. Okay, what did Mr. Flowers have on the second time
29 you saw him with those Grant Hill shoes on?

1 A. I just don't remember. I just remember those Fila
2 tennis shoes.

3 Q. Who else was with Mr. Flowers?

4 A. No one.

5 Q. Was anybody else with you?

6 A. No, sir.

7 Q. And you talked to the police at some point. Who
8 did you talk to? Was it Mr. John Johnson?

9 A. Yes, sir.

10 Q. What day did you talk to him?

11 A. I don't remember.

12 Q. Did you also talk to a gentleman by the name of
13 Chokwe Lumumba?

14 A. Yes, I did.

15 Q. Do you remember when you talked to him?

16 A. No, sir.

17 BY MR. CARTER: One moment, Your Honor.

18 Q. What kind of emblem did Grant Hill Filas have on
19 them?

20 A. Emblem?

21 Q. Right.

22 A. I just, I can't remember.

23 BY MR. CARTER: One moment, Your Honor.

24 (Defense Counsel confer.)

25 BY MR. CARTER:

26 Q. Ms. Gholston, we don't have a pair of the shoes
27 here right now. Could you describe them for me? Describe
28 the shoes you saw.

29 A. They was white high top. It was white high top

Elaine Gholston - CROSS

1 tennis shoes with red, white and blue colors on them.

2 Q. Okay, how was the top made?

3 A. The top of the tennis shoes?

4 Q. Yeah.

5 A. I can't remember.

6 Q. Did they have any kind of curves, or were they
7 straight?

8 A. Straight. I want to say they were straight.

9 Q. Did they have any, what was a Fila symbol on them?

10 A. A Fila symbol?

11 Q. Uh-hum.

12 A. Yes, sir.

13 Q. Where is that?

14 A. I want to say on the side of the tennis shoe.

15 Q. Are you sure?

16 A. No, sir. I'm not just sure.

17 BY MR. CARTER: No further questions.

18 BY MR. HILL: No further questions from the
19 witness, Your Honor.

20 BY THE COURT: Y'all want her to return to the
21 witness room?

22 BY MR. EVANS: We will excuse her.

23 BY MR. HILL: She can be excused, Your Honor.

24 BY MR. CARTER: Okay, we excuse her too, Your
25 Honor.

26 BY THE COURT: You are free to go, ma'am.

27 WITNESS EXCUSED

28 BY THE COURT: Who will you have next?

29 BY MR. EVANS: Mary Jeanette Fleming.

Mary Jeanette Fleming - DIRECT

MARY JEANETTE FLEMING,

upon being called to testify as a witness by the State of Mississippi, having first been duly sworn, testified as follows, to-wit:

BY THE COURT: State your name, please, ma'am.

BY THE WITNESS: Mary Jeanette Fleming.

DIRECT EXAMINATION BY MR. EVANS:

Q. Ms. Fleming, I need you to talk loud so that everybody can hear you; okay?

A. Mary Jeanette Fleming.

Q. Thank you. Good morning, Ms. Fleming.

A. Good morning.

Q. Ms. Fleming, I want to direct your attention back to July the 16th, 1996, the morning that the four people were killed at Tardy Furniture. Do you remember that morning?

A. Yes, sir.

Q. Did you have an occasion to go anywhere that morning?

A. I went to Weed Brothers to drop my car off to get a windshield replaced.

Q. What time did you go to Weed Brothers?

A. I left home at ten minutes to 9:00.

Q. And where is Weed Brothers located?

A. Behind Tardy's.

Q. Once you carried your car to Weed Brothers to get the windshield replaced, what did you do?

A. I left, I dropped my car off, and I was walking back home, and that's when I seen Curtis Flowers on Campbell

Mary Jeanette Fleming - DIRECT
1 Street as I was walking home.

2 Q. All right, you say you saw Curtis Flowers on
3 Campbell Street as you were walking home?

4 A. Yes, sir.

5 Q. Did you know Curtis Flowers at that time?

6 A. Yes, sir. I knew him.

7 Q. How long had you known him?

8 A. For years and years.

9 Q. Is there any question in your mind that you saw
10 Curtis Flowers on Campbell Street after you dropped your car
11 off at Weed Brothers?

12 A. No questions.

13 Q. Did y'all have any conversation?

14 A. He spoke to me.

15 Q. Do you remember what he said?

16 A. "Hey, good looking." And I replied, "Hey." I
17 spoke back to him.

18 Q. How close did y'all get?

19 A. We walked close because we were side by side. I
20 passed -- we, you know, passed on the side together.

21 Q. So there's no question who he was?

22 A. No questions.

23 Q. Do you see the person in the courtroom today that
24 you met as you were walking back home?

25 A. Yes, sir.

26 Q. Would you point to him and identify him, please?

27 A. Sitting right there.

28 BY MR. EVANS: May the record reflect that she has
29 identified the Defendant in this case?

Mary Jeanette Fleming - DIRECT - CROSS
BY THE COURT: Let the record reflect that.

BY MR. EVANS:

Q. Is where you met him that morning on the east side of Highway 51?

A. Yes, sir.

Q. Was he walking away from town or toward town when you met him?

A. Towards town.

Q. As you walked past the Defendant, did you have an occasion to see someone else in their yard?

A. When I stopped by a friend of mine's house after I left, I seen Beneva Henry in her yard sitting on her porch. She was sitting on the porch.

Q. Can you give us an idea how long it took you to drop your car off and walk?

A. I dropped, as soon as I dropped it off, I started walking back home.

BY MR. EVANS: Tender the witness, Your Honor.

CROSS-EXAMINATION BY MR. DE GRUY:

Q. Good morning, Ms. Fleming.

A. Good morning.

Q. I am Andre de Gruy. Ms. Fleming, what is your relation to Clemmie Fleming?

A. That's my niece.

Q. You and Clemmie close?

A. Well, we talk sometimes.

Q. Back in 1996 in July and up to about February of '97, did y'all talk frequently?

A. No.

Mary Jeanette Fleming - CROSS

1 Q. Y'all didn't talk too much back then?

2 A. (Witness shakes her head.)

3 Q. Now the first time you gave a statement to the
4 police, did they tape record a statement of yours?

5 A. I don't know.

6 Q. When you gave them a statement, that was, that was
7 in February of 1997; right?

8 A. Yes, sir.

9 Q. And you are saying from July of 1996 to February
10 of '97, you never talked to Clemmie about anything you saw
11 the day that, the shooting at Tardy's?

12 A. Yeah. We just, we talked about that. I had told
13 her about what I had seen, when I seen Curtis Flowers.

14 Q. Did you -- what was Curtis wearing the day you saw
15 him?

16 A. He was wearing a gray, a gray light jacket, a
17 white shirt and brown pants.

18 Q. Were these long pants or short pants?

19 A. Long.

20 Q. He was wearing long brown pants. Are you sure it
21 was a gray jacket?

22 A. Yes, I am sure.

23 Q. Okay. What kind of jacket are you talking about?

24 A. It wasn't a suit jacket. It was like a little
25 light, like a windbreaker jacket--

26 Q. --windbreaker--

27 A. --because he had something on his shoulder like
28 logo. One of them was purple, blue and red.

29 Q. Purple, blue and red logo?

Mary Jeanette Fleming - CROSS

1 A. Yes.

2 Q. Is that like a team logo?

3 A. Yes.

4 Q. Do you read the newspaper regularly? The local
5 papers?

6 A. Yeah, the *Winona Times*.

7 Q. So you were aware that a reward had been posted
8 for information on this case?

9 A. I had, I seen a poster one time on a light pole.

10 Q. Back in July, it was real hot, wasn't it?

11 A. Yes, it was.

12 Q. But he was wearing long pants and a jacket?

13 A. Yes, he was. I was wondering myself why did he
14 have a jacket on.

15 Q. Ms. Fleming, I'm not asking you this to embarrass
16 you, but you have had some treatment, inpatient treatment
17 for mental health problems in the past?

18 A. That ain't got nothing to do with what you are
19 talking about. Yes, I have.

20 Q. It doesn't affect your memory in any way?

21 A. No, it don't. No.

22 BY MR. DE GRUY: One moment, Your Honor.

23 (Mr. de Gruy confers with the Defendant.)

24 BY MR. DE GRUY: That's all I have, Your Honor.

25 REDIRECT EXAMINATION BY MR. EVANS:

26 Q. Ms. Fleming, your nerve problems don't affect your
27 eyesight, do they?

28 A. No.

29 Q. And don't affect you knowing who you saw that

Fleming - REDIRECT Bailey - DIRECT
1 morning either, do they?

2 A. No, it don't.

3 Q. Did you see this Defendant walking going in the
4 direction of town that morning after 9 o'clock?

5 A. Yes, I did.

6 BY MR. EVANS: Nothing further.

7 BY THE COURT: Is she finally excused?

8 BY MR. EVANS: Yes, sir.

9 BY MR. CARTER: Yes, sir.

10 BY THE COURT: You are free to go, ma'am.

11 WITNESS EXCUSED

12 BY THE COURT: Who do you have next?

13 BY MR. HILL: Your Honor, we call Sherry Bailey.

14 SHARON BAILEY,

15 upon being called to testify as a witness by the State of
16 Mississippi, having first been duly sworn, testified as
17 follows, to-wit:

18 BY THE COURT: Have a seat up here, please, ma'am.
19 State your name, please.

20 BY THE WITNESS: Sharon Bailey.

21 BY THE COURT: You need to talk loud enough so
22 that they can hear you back there.

23 BY THE WITNESS: Sharon Bailey.

24 BY MR. HILL: May I proceed, Your Honor?

25 BY THE COURT: Yes.

26 DIRECT EXAMINATION BY MR. HILL:

27 Q. Good morning, Ms. Bailey.

28 A. Good morning.

29 Q. Ms. Bailey, I want to ask you if you will tell the

Sharon Bailey - DIRECT

1 ladies and gentlemen of the jury what town you live in,
2 please.

3 A. Winona, Mississippi.

4 Q. And speaking loudly, can you tell us how long you
5 have lived here in Winona?

6 A. I moved here in 1975.

7 Q. And have you lived here since then?

8 A. I have.

9 Q. Can you tell the ladies and gentlemen of the jury
10 whether or not you recall the day of the murders at the
11 Tardy Furniture Company?

12 A. I do. I do recall that.

13 Q. Do you remember where you were working that day?

14 A. Yes. I was working at Sunburst Bank.

15 Q. In what capacity? What were you doing on that
16 particular morning?

17 A. I was doing the drive through, and we were taking
18 the bags. And anyway, she would come and get her bag.

19 Q. Let me stop you right there.

20 A. Okay.

21 Q. Did you know a person by the name of Ms. Carmen
22 Rigby?

23 A. Yes, I do.

24 Q. Did you see her that morning at the drive through
25 of your bank?

26 A. Yes.

27 Q. I think that was Sunburst Bank?

28 A. Yeah.

29 Q. Is that right?

Sharon Bailey - DIRECT

1 A. That's right. Uh-hum.

2 Q. You saw her at the drive through that morning?

3 A. Uh-hum.

4 Q. Did she have a deposit that morning?

5 A. A gray bag. I'm not sure about-- I believe
6 because it was a different color, I think, back then. It
7 was grayish, I think.

8 Q. All right, I want to show you State's Exhibit
9 number 36. Would you take a look. Remove it from that
10 paper, please, and take a look at that bag.

11 A. That's it.

12 Q. Would you also look inside the bag, Ms. Bailey.

13 A. (Witness complies.)

14 Q. Is there anything in there?

15 A. Her bank book.

16 Q. Would you remove it, please. Take the bank book,
17 the deposit book out.

18 A. (Witness complies.)

19 Q. Would you leaf through there and see if you see
20 any marks or indications in that deposit book that you
21 recognize?

22 A. Uh-hum.

23 Q. Would you tell us when the last one is, the last
24 deposit is stamped, please.

25 A. The last deposit was July 16th.

26 Q. Yes, ma'am. Is your mark or initials on that
27 stamp?

28 A. Yes.

29 Q. Are you the one that made that?

Sharon Bailey - DIRECT

1 A. Yes, I am.

2 Q. Can you tell us about what time it was that you
3 saw Ms. Carmen Rigby at the drive through?

4 A. Well, we opened up at 8:30 where you could bring
5 or send the bank bags through there. We could operate that
6 way before the bank opened.

7 Q. What is your best estimate of the time that
8 Ms. Rigby was in there?

9 A. It would have to be 8:30, a little past.

10 Q. Okay. So nine-ish. 8:30 to 9:00, somewhere in
11 that area?

12 A. Uh-hum.

13 Q. Okay. And how long had you known Carmen up to
14 that time? Just an estimate, ball park.

15 A. Probably ten years.

16 BY MR. HILL: Thank you, ma'am. Nothing further,
17 Your Honor.

18 BY MR. CARTER: No questions.

19 BY THE COURT: Is she finally excused?

20 BY MR. EVANS: Yes, sir.

21 BY THE COURT: You are free to go, ma'am.

22 WITNESS EXCUSED.

23 BY MR. EVANS: Patricia Sullivan.

24 BY THE COURT: I'm sorry. Who?

25 BY MR. EVANS: Patricia Sullivan.

26 PATRICIA SULLIVAN,

27 upon being called to testify as a witness by the State of
28 Mississippi, having first been duly sworn, testified as
29 follows, to-wit:

Patricia Sullivan - DIRECT

1 BY THE COURT: State your name, please.

2 BY THE WITNESS: Patricia Sullivan.

3 BY THE COURT: Ms. Sullivan, you have got to talk
4 louder than that so they can hear you. That microphone
5 won't help you.

6 BY THE WITNESS: Okay. Patricia Sullivan.

7 DIRECT EXAMINATION BY MR. EVANS:

8 Q. Good morning, Ms. Sullivan.

9 A. Good morning.

10 Q. Ms. Sullivan, I want to direct your attention back
11 to July the 16th, 1996, the day that the four people were
12 murdered at Tardy Furniture. Do you remember that day?

13 A. Yes, sir.

14 Q. Where were you living at that time?

15 A. On McNutt Drive.

16 Q. What address?

17 A. 700B McNutt Drive.

18 Q. Did you know two people by the name of Curtis
19 Flowers and Connie Moore?

20 A. Yes.

21 Q. Where did they live?

22 A. Next door. I believe it was like 702.

23 Q. Okay. How long had you known them?

24 A. Um, I knew them for a while.

25 Q. Okay. Did you have an occasion -- well, let me
26 ask you this first. What is the, how close is your house to
27 the house they were living in?

28 A. Just right next door. Less than five feet. Less
29 than, just like my house is here and then just next door.

Patricia Sullivan - DIRECT

1 Q. So we are talking about apartments?

2 A. Yes, apartments.

3 Q. So it's not like houses that are each on a
4 separate lot?

5 A. No.

6 Q. So y'all actually lived about five feet apart?

7 A. Yes.

8 Q. Were y'all friends at that time?

9 A. Yes.

10 Q. At that time did you have any special connections
11 with any of Connie Moore's children?

12 A. Yes, the baby.

13 Q. And what was--

14 A. --at the time.

15 Q. What was that connection?

16 A. I was her godmother.

17 Q. You were Brittany's godmother?

18 A. Yes.

19 Q. Do you see Curtis Flowers in the courtroom?

20 A. Yes.

21 Q. Would you point to him and identify him, please?

22 A. Right there.

23 BY MR. EVANS: May the record reflect that she has
24 identified the Defendant?

25 BY THE COURT: Let the record reflect that.

26 BY MR. EVANS:

27 Q. Did you see the Defendant Curtis Flowers on the
28 morning of the murders?

29 A. Yes, I did.

Patricia Sullivan - DIRECT

1 Q. What was the first time that you saw him that
2 morning?

3 A. The first time I saw him that morning was around
4 about, I would say could be around about 4:45 or a quarter
5 to 5:00, or it could have also been like 20 minutes until
6 5:00. But I know it wasn't 5:00 yet.

7 Q. Something before 5 o'clock that morning you saw
8 him?

9 A. Yes.

10 Q. What was he doing?

11 A. He was just sitting on the porch smoking a
12 cigarette.

13 Q. Did y'all speak?

14 A. I spoke, but he didn't speak back.

15 Q. How far away from him were you when you saw him
16 sitting on the porch at approximately 4:45 on the morning of
17 the murders?

18 A. Well, I was in the road, in the street, like the
19 main street to walk. And the house was a little bit off the
20 street, so he was just sitting there on the porch.

21 Q. What was the next time you saw him that day?

22 A. It could have been around 7:30.

23 Q. What was he doing at that time?

24 A. That time when I seen him that time, he was
25 like -- at the back of our houses is like a hill like, and
26 he was coming, running across the hill.

27 Q. Was he running away from his house or back to his
28 house?

29 A. Back to his house.

Patricia Sullivan - DIRECT - CROSS

1 Q. So at approximately 7:30 that morning, he was
2 running back to his house from somewhere?

3 A. Yes, he was.

4 Q. Were you familiar with Fila Grant Hill tennis
5 shoes back at that time?

6 A. Yes, I was.

7 Q. Why were you familiar with them?

8 A. Because he had a pair, and he had his before my
9 kids got theirs, and they was very popular.

10 Q. Okay. You say he had a pair. Are you talking
11 about--

12 A. --Mr. Flowers, Curtis, yes.

13 Q. The Defendant Curtis Flowers had a pair of Fila
14 Grant Hill tennis shoes during that time?

15 A. Yes.

16 Q. And you saw him two times that day, once sitting
17 on the porch about 4:45, and then once about 7:30 in the
18 morning running to his house from somewhere?

19 A. Yes.

20 Q. And you are sure it's the morning of the murders?

21 A. Yes, it was.

22 BY MR. EVANS: Your Honor, I tender the witness.

23 BY MR. CARTER: One moment, Your Honor.

24 CROSS-EXAMINATION BY MR. CARTER:

25 Q. Ms. Hallmon, isn't it a fact that there was more
26 than one style of Grant Hill Filas out at the time?

27 A. I'm not for sure about that. I am just for sure
28 about the ones that I had bought my kids. They wanted a
29 pair like his, even though they was similar. Little kids'

1 shoes were different. That's what made me prompted to buy
2 my kids some because Curtis had some.

3 Q. So you know Curtis had some kind of Grant Hill
4 Filas?

5 A. They was Grant Hill Fila tennis shoes.

6 Q. Okay. What kind did you buy your children?

7 A. I bought them some Grant Hill Fila tennis shoes.

8 Q. What addition or style?

9 A. Grant Hill Fila tennis shoes. The white ones with
10 the color, the different red and blue coloring on it.

11 Q. Now how was the one you bought your kids different
12 from the ones that Mr. Flowers, you said Mr. Flowers had?

13 A. Yes. Because adult tennis shoes comes a different
14 way on some. They all, they similar, but it is going to be
15 a little something different about the Grant Hill Filas for
16 the kids.

17 Q. Okay, what was different about them? What was a
18 little different about them?

19 A. It could have been how the symbol, how big the
20 symbol was on there that shows Filas on the side, on the
21 side of the shoe. Or it could have been like on one pair of
22 the shoes, they have the blue thing coming around, coming
23 around the tennis shoes or something. It couldn't have
24 been, it wasn't much. It just was probably a little
25 something because they were kids.

26 Q. Yes, and I know you say could have been, but since
27 you saw them--

28 A. -- I can't remember that.

29 Q. Now at the time you saw Mr. Flowers around 4:45 or

Patricia Sullivan - CROSS

1 4:30 smoking a cigarette, what did he have on?

2 A. He had on some short pants and a white shirt with
3 writing on it.

4 Q. Are you sure you didn't say something different at
5 some other point?

6 A. Do what now?

7 Q. Are you sure you didn't give a different
8 description of what he had on at 4:45? Around 4:45, that's
9 when he was smoking a cigarette; right?

10 A. Right.

11 Q. And you are sure he had a shirt on?

12 A. He had a shirt on.

13 Q. Okay, and when you saw him again at around 7:30,
14 how was he dressed?

15 A. He had on some windsuit, some nylon windsuit pants
16 with -- they was unzipped on the leg.

17 Q. What color were they?

18 A. Black.

19 Q. What color was the shirt?

20 A. White.

21 Q. And what kind of shoes did he have on then?

22 A. He had on his tennis shoes.

23 Q. What you mean?

24 A. His Grant Hill Fila tennis shoes.

25 Q. Did you ever see him wearing any other pair or
26 kinds of shoes?

27 A. Yes.

28 Q. What other kind did he wear?

29 A. I done saw him wear Sunday shoes, like shoes you

Patricia Sullivan - CROSS

1 wear to church, Sunday, you know.

2 Q. What other kind of tennis shoes did you see him
3 wear?

4 A. Well, I hadn't saw him wear any more kind of
5 tennis shoes.

6 Q. So as far as you know, all he had was Grant Hill
7 Fila tennis shoes?

8 A. That's all I know. That's all I seen. He could
9 have had many more pairs, but that's just all I seen.

10 Q. How long had you known Mr. Flowers by that time?

11 A. By that time. I have been knowing Curtis. I been
12 knowing him.

13 Q. You have been knowing him, and all you'd had
14 ever-- how long had you known him? How long had you lived
15 next to him?

16 A. Well, I can't really say. I know it was more than
17 a year.

18 Q. Okay, and for that whole year he wore Grant Hill
19 Fila tennis shoes when you saw him?

20 A. No, I'm not for sure. I wasn't watching his feet
21 every time I seen him. I wasn't, I don't pay that much
22 attention to him from head to toe like that. I just know, I
23 know Curtis, and I know that morning what he was wearing. I
24 know that.

25 Q. When did you talk to the police to give them a
26 statement about having seen Mr. Flowers that morning?

27 A. I don't -- it wasn't right off. I don't know. It
28 wasn't, it wasn't right then and there. I don't know.

29 Q. Wasn't it like a month later?

Patricia Sullivan - CROSS

1 A. Um, I'm not for sure.

2 Q. So let me make sure I understand. You usually
3 didn't pay Mr. Flowers much attention in terms of what he
4 was wearing; is that fair to say, what he had on?

5 A. Say that again.

6 Q. Ordinarily, you didn't pay Mr. Flowers much
7 attention in terms of what clothing he had on?

8 A. I don't understand the question.

9 Q. I believe, if I'm not mistaken, you said earlier
10 that you don't frequently or on every occasion pay attention
11 to what Mr. Flowers was wearing back in those days?

12 A. No, I didn't say that.

13 Q. What did you say?

14 A. I said I don't pay his feet attention every time I
15 see him. That's what I said.

16 Q. Okay. So not to argue with you, but is it fair to
17 say that while you didn't pay his feet attention often when
18 you saw him, that you paid his other clothing, his pants and
19 his shirt--

20 A. -- sometimes. I just look, you know, not really
21 paying attention; not really paying attention to him trying
22 to figure out what he is wearing, but you know, I see him.

23 Q. Okay.

24 A. I didn't have no reason to.

25 Q. Okay. So is it fair -- okay. To paraphrase, to
26 be accurate, as accurate as I can be, there was nothing
27 about Mr. Flowers that caused you to pay attention to him in
28 terms of what he was wearing, be it his feet or other parts
29 of his body, often when you saw him?

Patricia Sullivan - CROSS

1 A. Not really.

2 Q. Okay. Well, what is it that made him stand out on
3 this particular day?

4 A. Okay, the first time when I was walking, I was
5 walking on my way back home. I really, I was just, just
6 speaking like I always do because we was friends, you know,
7 just speaking because--

8 Q. -- and it--I'm sorry. Go ahead.

9 A. Because he constantly, you know, he wore short
10 pants and a T-shirt. And so I just seen him that morning,
11 didn't know what, didn't know nothing. I was just walking,
12 speaking friendly. How are you, you know. I always speak.
13 He always, he a friendly person. He always speak to me, and
14 that morning he didn't speak to me, and I just went on home.
15 I didn't--

16 Q. Were you bothered that morning that, did it bother
17 you that he didn't speak?

18 A. Yeah, because we friends. I wanted to know why
19 Curtis didn't speak to me this morning, yeah.

20 Q. Did you ask him why he--

21 A. -- no, I didn't ask him nothing. I just went on
22 in my house, and that's what I did.

23 Q. Okay. And I take it that's the only time that he
24 had ever, you had ever spoke to him that he didn't speak to
25 you?

26 A. Right. It is.

27 Q. Okay. And it wasn't unusual to see him on the
28 porch?

29 A. No.

1 Q. Smoking?

2 A. Uh-um.

3 Q. Okay. You have a brother by the name of Odell
4 Hallmon; right?

5 A. Yes, I do.

6 Q. Do you love him?

7 A. Yes, I do.

8 Q. You would do anything to help him?

9 A. If it's right.

10 Q. Were you talking to him and having a brother and
11 sister relationship with him back then?

12 A. No, I was not.

13 Q. So something had happened and you were not even
14 talking to your brother back then?

15 A. No, nothing had happened. He just--

16 BY MR. EVANS: --I object on relevance at this
17 point on this.

18 BY THE COURT: Sustained.

19 BY MR. CARTER:

20 Q. One moment, Your Honor. How many pairs of Grant
21 Hill Fila shoes did you buy your children? Do you remember,
22 back then?

23 A. Say that again.

24 Q. How many pairs of -- how many boys did you have?

25 A. Two.

26 Q. And your testimony is that you bought both of them
27 some Grant Hill Fila shoes back then?

28 A. Yes.

29 Q. How old were they? You haven't got to be

Patricia Sullivan - CROSS

1 accurate, just the best you can.

2 A. I think Jamara was 11, and Kevin was eight, just
3 turning nine, I believe.

4 Q. And how long had Mr. Flowers been wearing those
5 Grant Hill Fila shoes?

6 A. I don't know. I don't know that.

7 Q. Was it months?

8 A. Say what?

9 Q. Had he been wearing them for months?

10 A. Well, I'm not for sure about that either. I'm not
11 for sure.

12 Q. Now neither time that you see Mr. Flowers did you
13 see any evidence of any crime; is that correct?

14 A. No, I didn't.

15 Q. Now you don't know where Mr. Flowers went or was
16 coming from either time you -- the second time you saw him,
17 you have no idea where he went or--

18 A. -- No, I do not.

19 Q. Now that second time you saw Mr. Flowers, where
20 were you? Where were you stationed, standing or--

21 A. I was in my, coming out of my door on the side,
22 coming out of my door on the side of my apartment. The
23 side, my side door faces the side of their house or their
24 apartment. And I could see the back door from there.

25 Q. Okay, did you speak to him then?

26 A. No.

27 Q. Now the pants you said Mr. Flowers had on, they
28 were not dress pants, were they?

29 A. No. No.

Patricia Sullivan - CROSS

1 Q. And you didn't see him with any black sweater, did
2 you?

3 A. No.

4 Q. Or a sweater that had some gray on it or--

5 A. No.

6 Q. And you didn't -- now Ms. Gholston, do you know
7 Ms. Gholston? Elaine Gholston?

8 A. Yes, I do.

9 Q. You didn't see her standing around that morning
10 when you saw Mr. Flowers, did you, or did you?

11 A. Which time are you talking about?

12 Q. Either time.

13 A. No, I did not.

14 Q. How did you wind up talking to the police? Did
15 you initiate a conversation with them, or did they initiate
16 one with you?

17 A. No, I did not. I can't remember how it happened,
18 how did I initiate or their initiated. I'm not for sure
19 because I just -- I'm not for sure about that.

20 Q. Were you working back then?

21 A. No, I wasn't.

22 Q. How did you determine that you saw Mr. Flowers
23 around 7:30 that morning?

24 A. Okay. I was getting ready to go outside to hang
25 out some clothes that morning. I was getting ready because
26 I had washed some clothes, and I was getting ready, and when
27 I left out, on my stove I had a clock on my stove. And I
28 have a cycle on my wash cycle, and my load wasn't that big,
29 so I know how long it took my clothes to get through on that

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1 wash cycle. So when I, by the time he coming back in the
2 house, I timed it myself from the time I went outside and
3 the time I came back in the house and what time it was when
4 I left and went out. And I know it was around 7:30.

5 BY MR. CARTER: One moment, Your Honor. I think I
6 am finished.

7 Q. Do you know how much Grant Hill Fila shoes were
8 costing back then?

9 A. Yes, I do.

10 Q. How much?

11 A. They was in the one hundred dollars; to the kids,
12 the kids' tennis shoes, they cost no more than 85, 75 to 85.
13 And the adults' was like a hundred, a hundred or so. I
14 didn't buy the adult shoes. I just bought my kids because
15 they got the kids' price. I didn't buy the adult; just had
16 the kids' price.

17 BY MR. CARTER: One moment, Your Honor. I think
18 I'm finished.

19 (Defense Counsel confer.)

20 BY MR. CARTER: We tender, Your Honor.

21 BY MR. EVANS: No further questions.

22 BY THE COURT: Is she finally excused?

23 BY MR. EVANS: Yes, sir.

24 BY THE COURT: You are free to go, ma'am. Who do
25 you have next?

26 BY MR. EVANS: Doyle Simpson.

27 BY MR. CARTER: Yes, Your Honor. We are going to
28 recall her.

29 BY THE COURT: Okay, ma'am, you will have to go

1 Doyle Simpson - DIRECT
back to the witness room.

2 BY THE WITNESS: They are going to recall me
3 today?

4 BY THE COURT: I do not know, ma'am.

5 WITNESS LEAVES THE COURTROOM.

6 DOYLE SIMPSON,
7 upon being called to testify as a witness by the State of
8 Mississippi, having first been duly sworn, testified as
9 follows, to-wit:

10 BY THE COURT: State your name, please, sir.

11 BY THE WITNESS: Doyle Simpson.

12 DIRECT EXAMINATION BY MR. EVANS:

13 Q. Good morning, Mr. Simpson.

14 A. Morning.

15 Q. Mr. Simpson, do you know a person by the name of
16 Curtis Flowers?

17 A. I do.

18 Q. I need you to speak--

19 A. I do.

20 Q. All right. How do you know him?

21 A. Yeah, I call him my nephew.

22 Q. He is your nephew?

23 A. Right.

24 Q. Mr. Simpson, I want to direct your attention back
25 to July the 16th of 1996, the morning of the murders at
26 Tardy Furniture. Do you remember that morning?

27 A. Yes, I do.

28 Q. Where were you working at that time?

29 A. Angelica.

Doyle Simpson - DIRECT

- 1 Q. What time did you go to work that morning?
- 2 A. 6:30.
- 3 Q. What kind of car do you own?
- 4 A. Pontiac Phoenix.
- 5 Q. What color is it?
- 6 A. Brown.
- 7 Q. There has been some question; is your car solid
- 8 brown, or is it two-tone?
- 9 A. It's two-tone, I think, yeah.
- 10 Q. Both of them are kind of brownish looking?
- 11 A. Right.
- 12 Q. And you went to work at what time that morning?
- 13 A. 6:30.
- 14 Q. And where do you work? Where did you work at that
- 15 time?
- 16 A. Angelica.
- 17 Q. Did you have any other jobs at that time?
- 18 A. Yeah.
- 19 Q. Where else did--
- 20 A. --at the Winona Vo-Tech.
- 21 Q. And what did you do at the Winona Vo-Tech?
- 22 A. I was a janitor.
- 23 Q. What were your duties at Angelica?
- 24 A. Janitor.
- 25 Q. At the time that you went to work on the morning
- 26 of the murders, did you have anything in your car?
- 27 A. Yes, I did.
- 28 Q. What was in there?
- 29 A. Had a gun in my, had a gun in my pocket.

Doyle Simpson - DIRECT

1 Q. In the glove compartment?

2 A. In the glove compartment.

3 Q. What kind of gun was that?

4 A. A .380.

5 Q. Did Curtis Flowers know that you had that gun?

6 A. Yes, he did.

7 Q. Had he seen it in your car before?

8 A. Yes, he have.

9 Q. Where did you park your car that morning?

10 A. In the parking lot like I usually park every
11 morning.

12 Q. Was the glove compartment that the gun was in
13 locked or unlocked?

14 A. It was locked.

15 Q. How do you know?

16 A. I locked it myself.

17 Q. When did you lock it?

18 A. I locked it that night before I come, like that
19 evening before I come, went to work that morning.

20 Q. Did you check it that next morning?

21 A. No, I did not.

22 Q. What did you do when you arrived at work?

23 A. I went straight to work.

24 Q. Okay. What was the next time that you left out to
25 go to your car or go anywhere?

26 A. I walked outside right before break, got my
27 breakfast, and I came back in.

28 Q. Where was your breakfast?

29 A. On the seat, front seat.

Doyle Simpson - DIRECT

1 Q. What time did you walk out and get your breakfast?

2 A. About 20 after. 9:20, something like that.

3 Q. Did you notice anything about your car or glove
4 compartment at that time?

5 A. No, I did not.

6 Q. What did you do after you got your breakfast?

7 A. Went on break.

8 Q. Okay, and ate your breakfast?

9 A. That's right.

10 Q. Did you leave Angelica, or did you stay there?

11 A. I stayed there.

12 Q. What did you do after the break?

13 A. After the break, I went back to work.

14 Q. What was the next time that you stopped work or
15 went to the car?

16 A. I went around about 25 after 10:00 to let my
17 windows down.

18 Q. Why did you go out about 25 after 10:00 and let
19 your windows down?

20 A. Because I get off at 10:30.

21 Q. Okay, is that a normal practice?

22 A. Normal thing, yeah.

23 Q. Cool the car off?

24 A. Cool, let the car -- I didn't have no air.

25 Q. Did you notice anything about the glove
26 compartment at that time?

27 A. No, I did not.

28 Q. What did you do after you let the windows down?

29 A. I went back in, and I started getting money for

Doyle Simpson - DIRECT

1 lunch.

2 Q. All right, let me ask you this. How did you let
3 the windows down?

4 A. It have power windows.

5 Q. Okay. Just tell me what you did.

6 A. I just opened the door and turned the switch and
7 psh-psh.

8 Q. Driver's door or passenger door?

9 A. Driver's door.

10 Q. Was there any problem with the passenger door?

11 A. No.

12 Q. The .380 that you in had in there, was it an
13 automatic?

14 A. Yeah, automatic.

15 Q. Was it loaded?

16 A. It was loaded.

17 Q. When was the next time that you went to your car?

18 A. When I got ready to go get lunch.

19 Q. All right, tell me about that. Are you talking
20 about your lunch or lunches for other people?

21 A. Lunch for other peoples. When I got ready to go,
22 when I got, after I got the money and I got ready to go, I
23 sat in my car. I was fixing to start it up. When I slammed
24 the door, the glove compartment fell open. That's when I
25 know somebody had been in my car.

26 Q. All right. The glove compartment that had been
27 locked fell open?

28 A. Yeah, it had been locked. It had been pried open.

29 Q. It had been pried open?

Doyle Simpson - DIRECT

1 A. Yes, sir. Someone had broke the lock on it.

2 Q. Was your .380 automatic in there or not?

3 A. It was gone.

4 Q. What did you do after you realized that someone
5 had broken into your glove compartment and taken your gun?

6 A. I went back and told, told the manager of the
7 plant.

8 Q. Approximately what time was that?

9 A. It was about 25 to 11:00, something like that.

10 Q. After you reported to the manager that your gun
11 was stolen out of the car, what did you do next?

12 A. I went on both places and picked up lunch. And
13 when I came back from picking up the lunch, the police were
14 down there.

15 Q. Did you talk to the police about someone stealing
16 your gun?

17 A. Yes. Yes, sir. I did.

18 Q. Did you tell--

19 A. --well, I didn't talk to them at that time. I
20 don't know who called them, but it was later on I told them
21 that somebody had stole, broke in my car.

22 Q. Yeah, when you got back from picking up the
23 lunches?

24 A. Lunch, right. I told I think Thornburg,
25 Mr. Thornburg.

26 Q. Mr. Thornburg. You told him that someone had
27 broken in your car?

28 A. Right.

29 Q. Did you have an occasion to take the officers at

Doyle Simpson - DIRECT

1 their request to where you had shot target practice with
2 this gun before?

3 A. Yes, I did.

4 Q. Where did you take them?

5 A. Out to my mama's house.

6 Q. And where is it located?

7 A. Parts Road.

8 Q. And did you show them where that gun had actually
9 been fired?

10 A. Yes, I did.

11 Q. Were you present when they recovered some bullets
12 out of a post?

13 A. Yes, I was.

14 Q. Now the officers asked you about where you got
15 this gun, didn't they?

16 A. Yes, sir.

17 Q. Now did you have an occasion to talk with anybody
18 about who had been seen standing beside your car?

19 A. No. Not that day, no.

20 Q. When did you talk to somebody about who had been
21 seen standing by your car?

22 A. Oh, I had asked the people next door that morning
23 had they seen anybody first.

24 Q. Okay. And what did they say?

25 A. They said they hadn't seen nobody.

26 Q. The next day did you talk to anyone that did see
27 somebody by your car?

28 A. No, I think it was a day or two days later.

29 Q. Okay, who was that?

1 A. That was Katherine Snow.

2 Q. Did she tell you who she saw standing by your car?

3 A. She said she saw a guy with short pants on, light,
4 kind of light, wasn't heavy but medium size, standing by my
5 car that morning.

6 Q. Did she tell you who it was?

7 A. She said uh-- no, she didn't call no names. She
8 didn't call no name.

9 Q. Did she later tell you who it was?

10 A. Yes.

11 Q. Who did she tell you it was?

12 A. Said Curtis Flowers.

13 Q. And Curtis is what relationship to you?

14 A. Nephew.

15 Q. So you knew that Curtis knew your gun was in the
16 vehicle; is that right?

17 A. Well, he knew I kept it in there. I don't know
18 about that morning, but he knowed I had, he knowed I had
19 been putting it in the glove compartment before.

20 Q. And you knew that he had been identified standing
21 by your car?

22 A. Yes, sir.

23 Q. Now when you told the officers where you had
24 gotten this gun, where did you tell them you had gotten it?

25 A. I told them I had got it from my brother.

26 Q. Was that true?

27 A. No, that's a lie.

28 Q. Why did you lie to the officers about where you
29 had gotten it from?

1 A. Because after Katherine Snow told me it was
2 Curtis, I said uh, then I said uh, then I lied. I said, I
3 told my brother that they said Curtis had got my gun, and
4 then I lied about, that's when I lied about the gun.

5 Q. So you lied about the gun because you knew Curtis
6 had been seen standing beside your car?

7 A. Right by my car, right. Yes, sir.

8 Q. Did you also know that there had been some murders
9 that morning?

10 A. Not until later on that day.

11 Q. When you talked to the officers--

12 A. --yes, sir--

13 Q. --about where you got the gun from?

14 A. Yes, sir.

15 Q. In your mind what did you think Curtis had done?

16 A. Stolen my gun.

17 Q. Do you know where Curtis was living at that time?

18 A. On McNutt. On McNutt Drive.

19 Q. Who was he living with?

20 A. Uh, I forget her name.

21 Q. Is it Connie Moore?

22 A. Connie Moore, that's her name. Connie.

23 Q. And tell me how he is your nephew. What is the
24 family relationship?

25 A. Through about my daddy.

26 BY MR. EVANS: One moment, Your Honor.

27 (State's Counsel confer.)

28 BY MR. EVANS: Your Honor, I will tender the
29 witness.

Doyle Simpson - CROSS
CROSS-EXAMINATION BY MR. DE GRUY:

1 Q. Good morning, Mr. Simpson.

2 A. Morning.

3 Q. I am Andre de Gruy. Mr. Simpson, you mention this
4 relationship to Curtis Flowers. Could you explain a little
5 more in detail exactly how you are related?
6

7 A. About, you know, they always call me uncle. He
8 always call me "Unk"; I always call him nephew. See, my
9 daddy married their grandmama, and see we got uh, some of us
10 got the same daddy, you know, with different mamas.

11 Q. Okay. But you are no blood relation to Curtis
12 Flowers?

13 A. Well, I guess well, might as well. Well, not
14 really.

15 Q. Not at all?

16 A. Yeah, my nephew. We still call him nephew. Yeah.

17 Q. You call him your nephew, but you are, in fact,
18 not related to him?

19 A. No. Well, by their mom, yeah.

20 Q. By the mom in the sense that you are -- after you
21 were grown, your father married--

22 A. No.

23 Q. -- his grandmother?

24 A. I don't know how, I don't know how that; I don't
25 know how that went on now.

26 Q. Okay.

27 A. No, sir. That was before my, that was before I
28 knowed, you know, I had some half brothers and stuff.

29 Q. So you are not, you are not really sure how you

1 are related?

2 A. About, you know, I guess. I guess. That's how I
3 took it like that.

4 Q. Okay.

5 A. About being, you know, by his granddaddy and my
6 daddy. That's how I took it like that.

7 Q. Now I'm going to show you -- may I approach, Your
8 Honor?

9 BY THE COURT: Yes.

10 BY MR. DE GRUY:

11 Q. I apologize; these don't seem to be in any order.
12 The last one, okay. I will come over here and see if you
13 can. Mr. Simpson, what is marked as State's Exhibit S-99A
14 right here?

15 A. Right.

16 Q. Do you recognize that?

17 A. That's my car.

18 Q. That's your car. And you just testified that this
19 is a two-tone brown car?

20 A. It's dark on the bottom down there.

21 Q. That is just a dark area. That is not a shadow?

22 A. I'm going to say that is the color of the car.

23 Q. That is the color of the car?

24 A. Two-tone, light and dark. That's what I call
25 two-tone.

26 Q. Now Mr. Simpson, this gun that you put in the car
27 the night before, the car was parked at your mother's house?

28 A. When now?

29 Q. The night before.

Doyle Simpson - CROSS

1 A. Right.

2 Q. That would be July 15?

3 A. Right.

4 Q. But you didn't spend the night at your mother's
5 house?

6 A. No.

7 Q. And Curtis wasn't at your mother's house that
8 night?

9 A. No. Not as I know, he wasn't there, no.

10 Q. And you -- I mean he wasn't there when you were
11 there?

12 A. No.

13 Q. Then you left and went to your girlfriend's house?

14 A. Right.

15 Q. Now you usually kept the gun in your mother's
16 house?

17 A. Right.

18 Q. That night you put it in the car for a reason?

19 A. No. I had got it cleaned that evening, and so
20 after I got it clean, I just stuck it in the pocket and
21 locked the pocket.

22 Q. So--

23 A. --I had a friend of mine, my cousin had cleaned it
24 that evening.

25 Q. And what is your cousin's name?

26 A. David Wean.

27 Q. David?

28 A. Wean.

29 Q. Wean?

1 A. Wean. He had cleaned it that evening.

2 Q. So you took it from your mother's house that
3 evening and took it to him?

4 A. Yeah. I waited on it until he cleaned it, and I
5 just sat around a while, and he cleaned it up for me. And I
6 took it and put it back in the car.

7 Q. And so when you got back to the house, you just
8 didn't take it out of the house--out of the car?

9 A. No, because when I got back, my girlfriend was
10 there. I just parked it. I just parked my car and got in
11 the car with her.

12 Q. So the reason it didn't go back in the house is
13 because when you got there, your girlfriend was there--

14 A. Yeah.

15 Q. --and you just got in the car and left with her?

16 A. Yes, sir.

17 Q. Now we know David Weems, your cousin, knew you had
18 the gun. Who else knew you had that gun?

19 A. Quite a few peoples know.

20 Q. Quite a few?

21 A. Yes, sir.

22 Q. Just about all your friends?

23 A. Not just about all of them. Some of them.

24 Q. Now you said you, when you were at work, you went
25 outside a couple of times at Angelica and did different
26 things with your car?

27 A. Right.

28 Q. You could have gotten in that car and driven
29 across town, couldn't you?

Doyle Simpson - CROSS

1 A. No.

2 Q. You didn't do that?

3 A. No, sir. I never did, I didn't leave the plant at
4 all that morning.

5 Q. Now you told us that when you were leaving to get
6 lunch, that's when you noticed the gun was gone?

7 A. When I closed, when I slammed, yeah, when I closed
8 the door, that's when the pocket fell down. That's when I
9 noticed. That's when I noticed. The pocket had came open
10 when I closed the door.

11 Q. Well, you had closed the door four or five or six
12 times before that. It never fell open?

13 A. No, see, I have to, I have to slam it to close it
14 real tight because it, you know, it was hard to close. The
15 driver's door was hard to close. So after I sit down, you
16 have got to slam it a little bit. When I slammed it a
17 little harder, that's when-- I was just pushing up as I goes
18 out there. When I got in the car and got ready to leave, I
19 had to slam it hard to make it close. That's when I
20 realized the pocket had fell down.

21 Q. And you would have also had to have closed it hard
22 when you--

23 A. --Nuh-uh. I didn't, I could push it up there.
24 That's all I did. But I knowed it had to be closed hard
25 before I took off.

26 Q. Now what was it that Katherine Snow told you about
27 what Curtis was wearing or what -- I'm sorry, the person she
28 saw by the car, what were they wearing?

29 A. I can't remember exactly. I remember she said

1 some short pants or something, white cap or something. I
2 can't remember all she--

3 Q. -- A white cap?

4 A. I think she said a white cap or something. I
5 can't remember.

6 Q. And did she tell you, did she give you the
7 description the same day that the gun was missing?

8 A. No.

9 Q. That was two days later?

10 A. Yeah, something. One or two days, yeah. Yes,
11 sir.

12 Q. And then sometime later you said she told you it
13 was Curtis?

14 A. (Witness nods his head.) Sometime later, yes.

15 Q. Do you know how long? How much--

16 A. I don't know.

17 Q. A week or two?

18 A. No, it wasn't that long; no, sir.

19 Q. Then you told us when -- you never called the
20 police?

21 A. No, I don't know how, I don't know who called. I
22 didn't.

23 Q. Okay. But Sheriff Thornburg was there to talk to
24 you the afternoon of the 16th?

25 A. Yes, sir.

26 Q. Around lunch time on the 16th?

27 A. Yes, sir.

28 Q. And he asked you about the gun, and you lied to
29 him and told him you got it from a cousin in New Orleans; is

1 that right?

2 A. Right. Brother.

3 Q. Yeah, brother in New Orleans, okay. Now you just
4 testified that the reason you lied to Sheriff Thornburg was
5 because you wanted to protect Curtis. Is that what you were
6 telling us?

7 A. That's right. No, wait a minute now. It wasn't
8 the same day. They didn't ask me about the gun the same day
9 now.

10 Q. He didn't ask you any questions about the gun?

11 A. He asked me, he asked me about Curtis the same
12 day. He asked me about the gun, but, you know, talking
13 about the gun come up missing the same, but he didn't ask me
14 where it came from the same day. It was about three or four
15 days later before they asked me about where the gun had came
16 from. It wasn't the same day now. Sure wasn't.

17 Q. So you are saying Sheriff Thornburg -- what did
18 Sheriff Thornburg ask you?

19 A. I can't remember. I can't remember.

20 Q. You can't remember?

21 A. All that, no.

22 Q. Mr. Simpson, you were once employed by Tardy
23 Furniture. You were once employed by--

24 A. -- Oh, yes, sir. I help them every now and then;
25 right. Part time.

26 Q. You also sometime back around the mid 90's owned a
27 pair of Fila tennis shoes?

28 A. No, I ain't never owned no Fila. No, sir.

29 Q. Do you remember testifying in Tupelo?

1 A. Oh, yeah. I think I, yeah. I remember, yeah,
2 sure did. I remember that. Yeah, I sure did. I done
3 forgot about that.

4 Q. You did own?

5 A. Yeah, I had one pair, yeah. Yes, sir. I sho'
6 did.

7 Q. One pair.

8 A. Yes, sir, sho' did.

9 BY MR. DE GRUY: One moment, Your Honor.

10 (Defense Counsel confer.)

11 Q. Mr. Simpson, back to July 16th; after July 16th,
12 were you suspended from work for a few days?

13 A. (Witness nods his head.)

14 Q. How many days?

15 A. Three days.

16 Q. So when you talked to Katherine Snow, it would
17 have been more than three days later?

18 A. No, I didn't--

19 Q. You talked to her at work?

20 A. I talked to her at work.

21 Q. Right, and you weren't at work for three days?

22 A. Well, they suspended, I think, about two or three
23 days later. They suspended, that they, uh, they gave me
24 three days, I think. I think it was two or three days later
25 before they, before that.

26 Q. Okay. So now you already told me you didn't talk
27 to, you didn't see Curtis the night of July 15th or the
28 morning of July 16.

29 A. No.

1 Q. Did you talk to him at all?

2 A. No.

3 Q. Did you get suspended because you were on the
4 clock and not where you were supposed to be?

5 A. No, I got suspended because of the gun.

6 Q. But you were, in fact, at some point off the
7 clock-- on the clock but not where you were supposed to be?

8 A. No, it wasn't nothing like that. Uh-uh.

9 BY MR. DE GRUY: No other questions, Judge.

10 REDIRECT EXAMINATION BY MR. EVANS:

11 Q. You were suspended strictly because you had a gun
12 in your vehicle that day, weren't you?

13 A. Yes, sir, on the premises.

14 Q. Now you were asked about the relationship of
15 Curtis. Do you consider Curtis your nephew?

16 A. I did.

17 Q. Did you consider him your nephew at that time?

18 A. Yes, sir. I did.

19 Q. Did you want to do anything to get him in trouble?

20 A. No, sir. I didn't.

21 Q. Why did you think you needed to protect him?

22 A. Sir?

23 Q. Why did you think you needed to protect him?

24 A. Because, only because I found out about that gun.

25 I thought he took my gun. Yes, sir.

26 Q. By the time you were protecting him, you knew he
27 took your gun?

28 A. Yes, sir.

29 Q. And you knew there had been some murders that day,

Doyle Simpson - REDIRECT

1 didn't you?

2 A. Yes, sir.

3 Q. Now you were asked about leaving. Did you ever
4 leave that plant without folks there knowing you were going
5 anywhere?

6 A. No, I didn't.

7 Q. When you went to pick up the meals, where did you
8 go?

9 A. I went to the chicken place and the City Cafe.

10 Q. How many different employees were you picking up
11 meals for, if you can remember?

12 A. Oh, it's about six or seven.

13 Q. Can you remember where you traveled to pick those
14 meals up?

15 A. I left Angelica, come right down 407, stopped at
16 the chicken place, put the order. Then I went, then I left
17 there and come down 51 and went to the City Cafe.

18 Q. And that would have been at about what time that
19 you left?

20 A. Between, I will say between something to 11:00 and
21 something after 11:00.

22 Q. So from 6:30 that morning when you arrived at work
23 until something before 11:00 when you went to pick up the
24 meals, where were you?

25 A. At the plant. All the time.

26 BY MR. EVANS: Nothing further.

27 BY THE COURT: You may step down. Do y'all want
28 him to stay?

29 BY MR. CARTER: Yes. We are going to call him.

Edward Lee McChristian - DIRECT
WITNESS LEAVES THE COURTROOM

BY MR. HILL: Can we have just a minute, Your Honor? (Pause.)

BY MR. EVANS: Edward Lee McChristian next, Your Honor.

EDWARD LEE McCHRISTIAN,
upon being called to testify as a witness by the State of Mississippi, having first been duly sworn, testified as follows, to-wit:

BY THE COURT: Have a seat over here, sir. State your name.

BY THE WITNESS: Edward Lee McChristian.

BY THE COURT: You have to speak real loud now.

BY THE WITNESS: Edward Lee McChristian.

BY THE COURT: Thank you, sir.

DIRECT EXAMINATION BY MR. EVANS:

Q. Good morning, Mr. McChristian.

A. Good morning.

Q. You are going to have to speak a little louder than that. We have got to make sure everybody can hear you; okay? Mr. McChristian, where do you live?

A. 603 Beck Street.

Q. Okay. Is that the same place you were living--

A. No.

Q. Okay, where were you living on the day of the murders at Tardy Furniture?

A. 603 Academy Street.

Q. And where is Academy Street located?

A. Right across from Beck Street.

1 Q. Okay. Do you know Curtis Flowers?

2 A. Yes, sir.

3 Q. Did you know him at that time?

4 A. Yes, sir.

5 Q. Did you see him on the morning of the murders?

6 A. Yes, sir.

7 Q. Where did you see him?

8 A. On Academy Street.

9 Q. Where was he when you saw him?

10 A. He was coming south on Academy going north.

11 Q. About what time was that?

12 A. Between 7:30 and 8 o'clock.

13 Q. Any question about who you saw?

14 A. No.

15 Q. Are you familiar with where Angelica is?

16 A. Yes, sir.

17 Q. Which direction from your house is it?

18 A. South.

19 Q. Okay, was he coming from the general direction of
20 Angelica when you saw him?

21 A. Yes.

22 Q. Who else was with you?

23 A. Bernard Seal, Clarence Forrest.

24 Q. Was there any conversations between any of the
25 four of y'all?

26 A. I can't remember, sir.

27 Q. But you saw the Defendant Curtis Flowers walking
28 in front of your house from the direction of Angelica
29 somewhere between 7:30 and 8:00 AM on the morning of the

Edward McChristian - DIRECT - CROSS
1 murders; is that right?

2 A. Yes, sir.

3 BY MR. EVANS: Tender the witness, Your Honor.

4 (State's Counsel confer.)

5 BY MR. EVANS:

6 Q. Yeah, one more thing. Do you know if you live on
7 the east side of Highway 51?

8 A. No.

9 Q. At that time. Are you familiar with whether or
10 not that was on the east side of Highway 51 or not?

11 A. Yes, sir.

12 Q. Was it?

13 A. (Witness nods his head.)

14 BY MR. EVANS: Nothing further.

15 CROSS-EXAMINATION BY MR. CARTER:

16 Q. Mr. McChristian, for what period of time did you
17 watch Curtis Flowers?

18 A. Sir, I didn't just watch him, sir. He was just
19 right there in front of me. Just right there in front of
20 me. I just looked up.

21 Q. And saw him?

22 A. Yes.

23 Q. So you don't know where he was coming from?

24 A. No, sir. I don't know.

25 Q. You don't know where he went?

26 A. No, I don't know--

27 Q. -- You don't know what other streets he took?

28 A. No, sir.

29 Q. You don't even know what street he was on before

Edward McChristian - CROSS

1 he turned on Academy, do you?

2 A. No, I don't.

3 Q. You don't know if he ever went all the way down to
4 Angelica Street; is that correct?

5 A. I don't know, sir.

6 Q. Does that mean -- I don't want to be confusing
7 about that, but you are saying that you don't have any proof
8 that he went down Angelica Street; is that correct?

9 A. The only thing I knew, when he came in front, I
10 just looked up and seen who he was. I never paid no more
11 attention.

12 Q. Okay. So you don't know how far he went in either
13 direction?

14 A. No, sir.

15 Q. Did you notice what he was wearing?

16 A. Not really. I just looked at his face.

17 Q. Okay. Was there anything unusual about the way he
18 acted or looked?

19 A. No, sir.

20 Q. Now you didn't talk to the police on the day that
21 the killings took place at Academy; is that correct-- I mean
22 at Tardy's? On July 16, 1996, you didn't talk to the police
23 that day, did you?

24 A. No.

25 Q. Do you know when you talked to them?

26 A. They picked me up, I think the next day.

27 Q. The next day? How many times did you talk to
28 them?

29 A. Just one.

- 1 Q. Well, are you sure it wasn't August the 15th,
2 1996, when they picked you up and talked to you?
- 3 A. I ain't for sure, sir.
- 4 Q. Okay, so it could have been a month later?
- 5 A. No, it wasn't no month later.
- 6 Q. Okay, who did you talk to?
- 7 A. Uh, Kenneth Townsend.
- 8 Q. Kenneth Townsend?
- 9 A. Yes.
- 10 Q. Do you remember talking to John Johnson?
- 11 A. Yes, they carried me to the office.
- 12 Q. Okay, Kenneth Townsend picked you up--
- 13 A. --right--
- 14 Q. --and took you to the police department, and you
15 talked to John Johnson?
- 16 A. Right.
- 17 Q. I don't mean to embarrass you, Mr. McChristian,
18 but do you read and write?
- 19 A. No, sir.
- 20 Q. Now when Mr. Johnson talked to you, there was a
21 tape recorder running; is that correct?
- 22 A. I'm not sure.
- 23 Q. You are not sure, so there could have been one,
24 but you just don't remember--
- 25 A. -- I didn't see one myself.
- 26 Q. And you do know John Johnson; is that correct?
- 27 A. Oh, yeah.
- 28 Q. And if John Johnson says he talked to you on
29 August the 15th--

Edward McChristian - CROSS - REDIRECT

1 BY MR. EVANS: -- Your Honor, I object. That is
2 not relevant.

3 BY THE COURT: Sustained.

4 BY MR. CARTER:

5 Q. Mr. McChristian, since you don't know what day you
6 talked to Mr. Johnson, can you dispute that you talked to
7 him on August the 15th, 1996?

8 A. I can't dispute nothing.

9 Q. Is that the only time you had ever seen
10 Mr. Flowers walking through the neighborhood?

11 A. That's the only time I seen him.

12 BY MR. CARTER: No further questions.

13 REDIRECT EXAMINATION BY MR. EVANS:

14 Q. Who did you see walking from the direction of
15 Angelica about 7:30 to 8 o'clock on the morning of the
16 murders at Tardy Furniture?

17 A. Curtis Flowers.

18 BY MR. EVANS: Nothing further.

19 BY THE COURT: Is he finally excused?

20 BY MR. EVANS: Yes, sir.

21 BY MR. CARTER: No, sir. We are going to call.

22 BY THE COURT: You need to go back to the witness
23 room. Let me see y'all.

24 WITNESS LEFT THE COURTROOM.

25 (Brief conference at the bench not transcribed.)

26 BY THE COURT: I am informed that that is a good
27 place for us to stop. As I promised you, we won't go
28 past lunch today being on Saturday. So I will send you
29 back over to the bailiffs, and I will see you Monday

Ruling - JURY OUT

1 morning at 9 o'clock.

2 (THE JURY WENT TO THE JURY ROOM, AND THE COURT
3 PROCEEDED WITH THE FOLLOWING:)

4 BY THE COURT: Okay, what is the name of this
5 witness?

6 BY MR. DE GRUY: We are talking about Ms. Butts?

7 BY THE COURT: I don't know. The one y'all--

8 BY MR. DE GRUY: --Ruby Butts.

9 BY THE COURT: Ruby Butts. Okay, the Court has
10 been informed this morning that the Defense has
11 produced or well, has produced to the State the name of
12 a witness who was not given to them in discovery.

13 The Court makes these findings. This case is 11
14 years old. It has been tried three times; it is now
15 being tried for the fourth time. The first two times
16 it had a different set of attorneys from the attorneys
17 that we have now in this case. The third time it was
18 tried, these attorneys were the attorneys of record in
19 that case for a substantial amount of time prior to the
20 trial. They have tried the case, and it has been
21 reversed. I think it has been two years at least,
22 three years since the last trial.

23 This trial began on -- discovery has been swapped
24 so many times in this, some of it pursuant to court
25 order, and the Court ordered that all discovery out
26 there, even from past counsel, be given to present
27 counsel. This case started on the 26th. We had a jury
28 by the 29th. We started testimony early that morning.
29 It is now Saturday morning, December the 1st. My

Ruling - JURY OUT

1 understanding is this witness' name was furnished to
2 the State on the 29th. The Court was notified of this
3 early on the morning of the 1st. It is now 12 noon on
4 Saturday, the 1st. Did I misstate that?

5 **BY MR. EVANS:** Yes, sir. We weren't notified
6 until yesterday evening.

7 **BY THE COURT:** Well, I meant, that's what I meant,
8 Friday, the 30th. You got it on Friday, the 30th. The
9 Court was notified on Saturday, December 1st. It is
10 now noon on December the 1st. We have taken testimony
11 at this time. We are going to recess until Monday at 9
12 o'clock.

13 I find clearly under Rule 904 this is a discovery
14 violation by the Defense. Therefore, it invokes the
15 procedure that is in that rule. The first step in that
16 procedure is that the State have the opportunity to
17 interview the witness or to examine any newly
18 discovered evidence that is produced. I gather that
19 this Ruby Butts is a resident of Winona because the
20 Defense indicated to me this morning they could produce
21 her. I order that she be produced immediately today so
22 that the State have the opportunity here on Saturday,
23 December the 1st, to interview this person.

24 The State, the next procedure in there is for the
25 State to decide whether or not to ask for a continuance
26 in an effort to rebut this or to ask me to exclude this
27 evidence. By doing this on Saturday and giving the
28 State, since the State has not even rested, two or
29 three days to look at the possibility of rebutting it,

Ruling - JURY OUT

1 I think that probably serves the purpose of the
2 continuance, although I am not ruling on that at this
3 time. In any event, I want that -- that's the
4 procedure I want done.

5 I also would refer each of you to the case law in
6 regards to this. It is recent, and it is substantial,
7 and it is clear. And so when you get ready to argue
8 this, you should be familiar with that case law. Okay?

9 **BY MR. EVANS:** Yes, sir. And for the record, Your
10 Honor, the Defense has already made her available. We
11 have already somewhat interviewed her, and we have
12 already proven through one witness that she is lying.
13 There is another witness that we may need time to pin
14 down.

15 **BY THE COURT:** Well, that's the reason I want to
16 invoke this procedure now. I could wait and let you
17 ask for the continuance next week, but in the
18 interests, since we have a day and a half or two days
19 probably to do this, in the interest of judicial
20 efficiency, I request that this all be done, the
21 procedure proceed.

22 **BY MR. EVANS:** Your Honor, one thing that the
23 State would ask, and I don't know if this is the proper
24 time for it or if you want us to wait, but I think
25 there needs to be some inquiry as to why this witness
26 that works with the Defendant's mother and aunt is just
27 now coming forward after three trials.

28 **BY THE COURT:** And I think that is an inquiry that
29 the Court needs to make when -- she has not been

Ruling - JURY OUT

presented. He is not offering her to testify yet.

When that time comes, that inquiry has got to be made.

There are substantial -- well, I mean I can give you

four cases right now that talk about it, and they talk

about what I can do and what constitutional questions I

have and what I must find in order to invoke some of

the sanctions involved in there. Those things will be

brought, will be brought up, and we are going to make a

record on it. And as a matter of fact, she is going to

probably -- I'm going to probably let y'all proffer her

testimony so that there is no question what the record

shows, and any appellate court will have all of the

facts before it.

BY MR. EVANS: Yes, sir.

BY THE COURT: Okay? All right, gentlemen. Y'all
have a good weekend.

BY MR. CARTER: What time? 9:00?

BY THE COURT: 9 o'clock.

COURT WAS RECESSED FOR THE DAY ON DECEMBER 1, 2007.

State of Mississippi
v. Montgomery Circuit #2003-0071-CR
CURTIS G. FLOWERS
(Testimony from 12/03 & 12/04/07)

Volume IV of IV
Pages 417 - 534

P-R-O-C-E-E-D-I-N-G-S

(THE FOLLOWING TESTIMONY WAS HEARD ON DECEMBER 3, 2007.)

THE COURT: Mr. Evans, who are you going to have first?

MR. EVANS: Odell Hallmon.

THE COURT: Before Mr. Hallmon comes in here, let me make a suggestion to both sides, because of what happened at the last trial. I want no questions asked of Mr. Hallmon that would invoke -- provoke an answer about a polygraph. I specifically tell you not to go there.

Mr. Evans, I would request that you speak with Mr. Hallmon and advise him of the same thing, that he is not to volunteer that information, nor answer any questions concerning it, even if he is asked. And if you think I need to tell him that, I would be glad to do that before the jury comes.

MR. EVANS: Yes, sir.

(A BREAK WAS TAKEN.)

MR. EVANS: He has been advised and advises he understands, Your Honor.

THE COURT: Okay. Well, let's have the jury then.

(THE JURY ENTERED THE COURTROOM.)

(THE WITNESS ENTERED THE COURTROOM AND WAS ADMINISTERED THE OATH.)

THE COURT: You can come around and have a seat over here.

(THE WITNESS WAS SEATED ON THE WITNESS STAND.)

THE COURT: Good morning.

1 THE WITNESS: Good morning, sir.

2 THE COURT: All right. State your name,
3 please, sir.

4 THE WITNESS: Odell Hallmon.

5 THE COURT: You have to speak up, Mr. Holloman.
6 Okay?

7 THE WITNESS: Yes, sir.

8 ODELL HALLMON, Called on behalf of the State, having been
9 duly sworn, was examined and testified as follows:

10 DIRECT EXAMINATION BY MR. EVANS:

11 Q. (By Mr. Evans:) Mr. Hallmon, talk loud enough where
12 everybody can hear you way back here. Okay?

13 A. Yes, sir.

14 Q. State your name, again, please.

15 A. Odell Hallmon.

16 Q. Mr. Hallmon, do you know a person by the name of
17 Curtis Flowers?

18 A. Yes, sir.

19 Q. How long have you known him?

20 A. For awhile, sir.

21 Q. Can you give me some general idea? And to give you
22 a reference, you know that this case occurred in '96. Did you
23 know him back before then?

24 A. Yes, sir.

25 Q. So you have known him for years?

26 A. Yes, sir.

27 Q. Did he have an occasion to ask you to do anything
28 for him in relationship to this case?

29 A. Yes, sir.

1 Q. What did he ask you to do?

2 A. He asked me to lie against my sister and make her
3 testimony -- discredit her testimony.

4 Q. Why did he ask you to lie against your sister?

5 A. Because he made like she owed a big part to his
6 freedom.

7 A JUROR: Judge, I didn't hear that last
8 statement.

9 THE COURT: You have to speak up. Answer that
10 again, Mr. Hallmon, and say it louder. Okay?

11 THE WITNESS: Yes, sir.

12 She asked me to lie. He asked me to lie against my
13 sister.

14 Q. (By Mr. Evans:) Why did he ask you to lie? What
15 did he tell you about that?

16 A. He said my sister play a big part in his freedom.
17 He wanted me to lie against her, discredit her testimony.

18 Q. He thought your sister played a big part in his
19 freedom, and he wanted you to try to make her out to be a
20 liar.

21 A. Yes, sir.

22 Q. Was your sister lying about anything she had said?

23 A. No, sir. Not to my knowledge.

24 Q. After Curtis Flowers asked you to lie for him, what
25 did you do?

26 Well, let me ask you this first. Did you agree to lie
27 for him?

28 A. Yes, sir.

29 Q. Why?

1 A. Because he promised me a lot of money and cigarettes
2 at the time.

3 Q. Now, I notice you are in green and white today.

4 A. Yes, sir.

5 Q. You are a state inmate; is that correct?

6 A. Yes, sir.

7 Q. Were you in jail at the time that he talked to you
8 about lying?

9 A. Yes, sir.

10 Q. What were you in jail for at that time?

11 A. Convicted felon with a firearm.

12 Q. What were your prior felony convictions at that
13 point?

14 A. Aggravated assault.

15 Q. Were all those from around Montgomery County area?

16 A. Well, one of them was in Carrollton, and one of them
17 was in Montgomery.

18 Q. All right. Who came up with the idea of what you
19 would lie about?

20 A. He did.

21 Q. What did he ask you to say?

22 A. He asked me to write a letter to his momma and tell
23 her that I -- my sister was lying. And a lot more stuff was
24 on the letter.

25 Q. Did you do that?

26 A. Yes, sir.

27 Q. Was any of that true?

28 A. No, sir.

29 Q. Did you, in fact, give testimony for him that was

1 lying, trying to discredit your sister?

2 A. Yes, sir, I did that.

3 Q. Why?

4 A. He promised me money. And at the time I was -- and
5 cigarettes and stuff like that. And I was going through a lot
6 at the time.

7 Q. Now, since then what made you tell the truth?

8 A. Well, I got out of the penitentiary. My conscience
9 was eating me up after everything had happened, and I talked
10 to my momma. So my momma was like you need to talk to Mr.
11 Evans. So I didn't get around to doing it then. But I
12 finally just kept on like nothing right, nothing good wouldn't
13 happen for me or nothing. So I went on and got that up off of
14 me. So I called Mr. Evans. I called you.

15 Q. Who is your mother?

16 A. Inez Hallmon.

17 Q. Where does she live?

18 A. In McCarter.

19 Q. She kept on you, wanting you to tell the truth.

20 A. Yes, sir.

21 Q. How did you get in touch with me?

22 A. I called you on the phone.

23 Q. Did you come talk to me?

24 A. No, sir.

25 Q. At that point did you talk to someone else?

26 A. Yes, sir.

27 Q. Who was that?

28 A. Mr. Johnson.

29 Q. And that is an investigator for the D.A.'s office.

1 A. Yes, sir.

2 Q. What did you tell him about the lying?

3 A. Well, I told him I had lied. And me and him did a
4 lot of talking. And so I told him exactly what happened, why
5 I lied and for what reason.

6 Q. Now, you and the defendant, Curtis Flowers,
7 discussed how you would lie. And you are saying that he told
8 you what to say. Is that correct?

9 A. Yes, sir.

10 Q. During that time did he ever admit anything to you
11 about his involvement in the murders?

12 A. Yes, sir.

13 Q. What did he tell you?

14 A. He told me he killed them people.

15 Q. Have you been offered anything to get you to testify
16 for the State of Mississippi --

17 A. No, sir.

18 Q. -- that this defendant asked you to lie for him and
19 that he admitted to you that he killed the people at Tardy
20 Furniture.

21 A. No, sir.

22 Q. Matter of fact, since you gave the statement to me
23 admitting that you lied and admitting that he killed those
24 people, what has happened to you since then?

25 A. I've been locked up and constantly been locked up.

26 Q. Who prosecuted you?

27 A. You did. You did.

28 Q. How many years are you serving?

29 A. Fourteen.

1 Q. So since you admitted the truth, I have gotten you
2 14 more years; is that correct?

3 A. Yes, sir.

4 Q. So have I done anything to try to get you to
5 cooperate?

6 A. No, sir. You ain't did nothing but, but gave me 14
7 years, left me in Parchman.

8 Q. Do you have any reason to lie against this
9 defendant?

10 A. No, sir. No reason. In fact, we are trying to
11 straighten out about it.

12 MR. EVANS: Your Honor, I'll tender the
13 witness.

14 CROSS-EXAMINATION BY MR. CARTER:

15 Q. Mr. Hallmon, are you a honorable man?

16 A. Well, yes, sir, in a way. Well, I have lied before,
17 but I ain't lying now.

18 Q. Are you a trustworthy person?

19 A. If I give my word, I try to stand to it.

20 Q. Are you a reliable person?

21 A. In what way?

22 Q. Any way.

23 A. Yeah. Yes, sir.

24 Q. Have you always told the truth in this case?

25 A. No, sir.

26 Q. In addition to writing Miss Flowers, Curtis Flowers'
27 momma, a letter, you also wrote Curtis Flowers' lawyer a
28 letter, didn't you?

29 A. Yes, sir.

1 Q. Chokwe Lumumba. And in addition to that, you also
2 went to court.

3 A. Yes, sir.

4 Q. With your hearing somewhere.

5 A. Yes, sir.

6 Q. And said something different than what you said
7 today, didn't you?

8 A. Yes, sir.

9 Q. And how much do you weigh?

10 A. Three hundred.

11 Q. And how long have you been a large fellow like you
12 are now?

13 A. About all my life really.

14 Q. You were pretty large when you was in jail with Mr.
15 Flowers, weren't you?

16 A. I was pretty large. Yes, sir.

17 Q. You want us to believe that Mr. Flowers enticed you
18 to lie by cigarettes and promise of money.

19 A. Yes, sir.

20 Q. Where was Mr. Flowers when he promised you money?

21 A. We was in the penitentiary.

22 Q. And Mr. Flowers -- and you still believed he had
23 some money he could give you.

24 A. Yeah. He said he was going to give it to me.

25 Q. And, and you want us to believe that cigarettes --
26 as a matter of fact, I think at another time you said he
27 offered you cigarettes, didn't he?

28 A. Yes, sir.

29 Q. You didn't mention any money, did you?

1 A. Sir.

2 Q. I don't think you mentioned any money.

3 A. Yeah, I did.

4 MR. CARTER: May I approach the witness, Your
5 Honor?

6 THE COURT: Yes.

7 MR. CARTER: May I have this marked for
8 identification?

9 (A LETTER ADDRESSED TO MRS. FLOWERS WAS MARKED
10 DEFENDANT'S EXHIBIT NUMBER 5 FOR IDENTIFICATION.)

11 Q. (By Mr. Carter:) Can you look at Exhibit 5 and tell
12 me if you know what it is?

13 A. It's --

14 Q. What is it?

15 A. It's my handwriting.

16 Q. Okay. It's a letter, isn't it? Isn't it a letter?

17 A. Yes, sir.

18 Q. And who did you write it to?

19 A. Miss Flowers.

20 Q. Okay. Read what you wrote.

21 A. Read it out loud?

22 MR. EVANS: I object to that. It is going to
23 have to be in evidence before he can read from it.

24 THE COURT: That's correct.

25 MR. CARTER: Move for admission to evidence,
26 Your Honor.

27 THE COURT: Okay. No objection. Let it be
28 admitted.

29 (THE LETTER ADDRESSED TO MRS. FLOWERS PREVIOUSLY MARKED

1 DEFENDANT'S EXHIBIT NUMBER 5 FOR IDENTIFICATION WAS ADMITTED
2 INTO EVIDENCE.)

3 A. May I read it now?

4 Q. Yes. This is the letter you wrote to Miss Flowers.

5 A. Yes, sir.

6 Q. Read it.

7 A. Hello, Miss Flowers. I hope this letter find you --

8 Q. Speak up some where they can hear you.

9 A. Hello, Miss Flowers. I hope this letter find you in
10 the best of health. For myself, I'm feeling sorry for what I
11 done. I know apologizing is not going to help, but I had to
12 give it a try. I was behind everything Ann did.

13 Q. And isn't Ann, Patricia Holloman?

14 A. Yes, sir.

15 Q. Okay. Go ahead.

16 A. I am truly sorry, Miss Flowers. I was locked up in
17 the Carroll County Jail when I had Ann to tell the police she
18 felt like Curtis committed those murders. I was trying to get
19 out of jail.

20 I had fines to pay off, and I couldn't get the money up.
21 So I tried to get that reward they had by using Ann. Ann done
22 got herself trapped in something. She don't know how bad it
23 seems to be. She know we planned that up while she was coming
24 to see me in the county jail.

25 Though people done told her if she get on stand and say
26 she was lying for money, they are going to convict her. So
27 the only thing I can do is tell the judge I pushed her up,
28 pushed her up to, to it, which I did.

29 Miss Flowers, please forgive me. I never thought things

1 would get out of hand like this. Every day I tell -- every
2 day I talk to Curtis I feel guilty. My family might turn
3 against me for what I done, but I don't care. Ann knows for
4 herself what we was trying to do. So anything I can do to
5 help her -- help in the matter, I'll do it. And in return,
6 after everything is over, I ask your forgiveness.

7 Miss Flowers, take care of yourself and may God bless us
8 through this hard time.

9 That is what Curtis had me to do.

10 Q. Is Curtis' name on there anywhere? I know that is
11 what you say, but we don't have any proof of that other than
12 you.

13 A. Huh?

14 MR. CARTER: May I approach the witness again,
15 Your Honor?

16 THE COURT: Um-hum.

17 MR. CARTER: Thank you.

18 May I have this marked for identification?

19 (THE LETTER ADDRESSED TO MR. LUMUMBA WAS MARKED
20 DEFENDANT'S EXHIBIT NUMBER 6 FOR IDENTIFICATION.)

21 Q. (By Mr. Carter:) Now, I pass you this, Mr. Hallmon.
22 Look at that and tell me if you know what that is.

23 A. It's a letter. I wrote this letter.

24 Q. Who did you write that one to?

25 A. To Mr. --

26 Q. Was it Chokwe Lumumba?

27 A. Lumumba. I don't know the first name.

28 MR. CARTER: I move for admission of this
29 document into evidence, Your Honor.

1 THE COURT: No objection. Let it be admitted.

2 (THE LETTER ADDRESSED TO MR. LUMUMBA PREVIOUSLY MARKED
3 DEFENDANT'S EXHIBIT NUMBER 6 FOR IDENTIFICATION WAS ADMITTED
4 INTO EVIDENCE.)

5 A. Ready?

6 Q. Go ahead.

7 A. My name is Odell Hallmon, Jr. I am writing in
8 concern of a --

9 Q. Speak up, sir.

10 A. My name is Odell Hallmon, Jr. I am writing in
11 concern of a -- of a case you, you was handling, the one of
12 Mr. Curtis Flowers.

13 My sister was a witness in that case. Well, I had my
14 sister to lie on the stand. It stated -- it started at the
15 county jail. I had a fine to pay off. And I didn't have the
16 money.

17 So I told her to tell the police she know who committed
18 those murders so she could get the \$30,000 and get me out. My
19 sister love me like I was her child. She do for me when
20 others don't.

21 I truly -- I am truly sorry for everything happened. I
22 never thought Curtis would be found guilty. All I was
23 thinking about at the time was myself. Mr. ...

24 Q. Lumumba.

25 A. ...Lumumba, I am willing to do anything in my power
26 to make up for what I done -- for what I did. I'm truly sorry
27 for what me and my sister did. I was trying to get out of
28 jail, and that was the only way I had. So I did it, and I'm
29 still locked up.

1 Once again, if I can do anything, please, let me know.
2 My sister -- she is the worst child my mother have. She just
3 like me, do anything for money. Mr. Lumumba, I hope that I
4 can be of some use to you. I never thought things would,
5 would got out of hand like this.

6 Yeah, this is another one.

7 Q. Thank you. And to top that off...

8 A. Yes, sir.

9 Q. -- you went to a hearing, and gave testimony under
10 oath --

11 A. Yes, sir.

12 Q. -- to the effect that you have in those letters; is
13 that correct?

14 A. Yes, sir.

15 Q. Now, Mr. Hallmon, don't you agree that a double
16 minded and -- person with two stories or two faces can't be
17 trusted?

18 A. Well, yes, sir.

19 Q. Now, didn't you testify at some point that your
20 sister did not buy any Grant Hill Fila for her children,
21 because she was too poor. She couldn't afford them.

22 A. If I said it, Curtis had me to saying it.

23 Q. Mr. Hallmon, Mr. Flowers, does he have special
24 powers or something?

25 A. At the time I was in lockdown. I was in 32 lock
26 down. You couldn't smoke over there. He used to get
27 cigarettes so --

28 Q. You did --

29 A. -- I had a --

1 MR. EVANS: Your Honor, may the witness finish
2 answering?

3 THE COURT: Right.

4 A. Like I say, I was at 32 lockdown. Lockdown where
5 you couldn't have cigarettes. And you know, cigarettes hold a
6 big power over you if you ain't got God in your life. You
7 know, so I wasn't able to smoke. So he used to get cigarettes
8 and give them to me.

9 And well, it made me feel like I owed him something.
10 Then he, he come up with that 'cause my sister was on it. I
11 didn't know nothing about it. I got dragged into this. That
12 is what happened.

13 Q. You finished?

14 A. Yes, sir.

15 Q. I know that is what you say. What proof is there
16 that you got drug into this? What proof is there that Mr.
17 Flowers made you write these letters?

18 A. If I would of never been beside him, never been on
19 -- never been close to him. We were right there next to one
20 another in 32. If I would have never been over there, I
21 wouldn't never be right here today.

22 Q. Did --

23 A. 'Cause it happened. It started happening when I got
24 beside him. That is when all the stuff started happening.
25 And I just wish I could get up. I wish I would have never
26 been in it.

27 Q. One moment, Your Honor.

28 So if Mr. Flowers had told you to get you some cigarettes
29 if you admitted you killed the folks, you would have done that

1 too.

2 A. At the time, I might would have. Cigarettes, you
3 know, see, I got -- I got -- see, I -- okay. Like, like
4 cigarettes, you know, cigarettes got -- it played a big part
5 in my life at the time.

6 Q. So you are an addict.

7 A. Yes, sir. I admit to that.

8 Q. And addicts will do anything for what they want. Is
9 that what you are saying?

10 A. Cigarettes. I know I had it for cigarettes at the
11 time.

12 Q. And cigarettes and the promise of money --

13 A. Yes, sir.

14 Q. -- is the only thing that you were offered that got
15 you to turn on your sister --

16 A. Got me in a bind.

17 Q. -- lie under oath --

18 A. Yes, sir.

19 Q. -- write Mr. Flowers' lawyer a letter.

20 A. Well, he, he actually wrote them letters. I just
21 recopied them.

22 Q. Have you -- did you say that before at a hearing?

23 A. No, I'm just --

24 Q. So you got -- you got something new today; is that
25 correct?

26 A. No, it ain't new. It's just we, we -- it was
27 together. We did it but, you know...

28 MR. CARTER: One moment. One moment, Your
29 Honor.

1 I tender, Your Honor.

2 REDIRECT EXAMINATION BY MR. EVANS:

3 Q. You admit that you lied previously in this case; is
4 that right?

5 A. Yes, sir.

6 Q. Who did you lie for?

7 A. For Curtis.

8 Q. Curtis was your friend.

9 A. Yes, sir.

10 Q. Y'all were locked down together.

11 A. Yes, sir.

12 Q. You were trying to help him.

13 A. Yes, sir.

14 Q. And you are admitting that to this jury.

15 A. Yes, sir.

16 Q. You said something awhile ago about if God's not in
17 your life, you'll do a lot of things.

18 A. Yes, sir.

19 Q. Has there been a change in there?

20 A. Oh, yes, sir.

21 Q. What is that change?

22 MR. CARTER: Your Honor, I object. That is
23 self-serving, and there is no way to independently verify
24 that.

25 THE COURT: I believe it came out on
26 cross-examination.

27 Q. (By Mr. Evans:) What has that change been in your
28 life?

29 A. Well, a good friend, a good, Christian friend of

1 mine, Mr. Tom Doolan, he come to Parchman. It just changed my
2 life. He took time out with me, start helping me, start
3 showing me. He started helping me out, and I done start doing
4 what is right for a change.

5 Q. Is what you are doing here today what is right and
6 true?

7 A. Yes, sir.

8 Q. Now, you were asked about a letter you wrote to one
9 of the defendant's attorneys.

10 A. Yeah.

11 Q. Did one of the defendant's attorneys help you word
12 any of that?

13 A. Yes, sir.

14 Q. Which one was it?

15 A. I don't know the dude's name. It was one of them.
16 It was...

17 Q. Harvey Freelon.

18 A. Yeah. That is the one. Freelon.

19 Q. He helped you word your lies.

20 A. Yes, sir. When I was in -- yes, sir.

21 Q. Who admitted to you that they killed the folks at
22 Tardy Furniture?

23 A. Curtis.

24 Q. Would you point to him and identify him, please?

25 A. There he go right there. (Pointed.)

26 MR. EVANS: May the record reflect he has
27 identified the defendant?

28 THE COURT: Let the record reflect that.

29 MR. EVANS: Nothing further of this witness,

1 Your Honor.

2 THE COURT: Can he be finally excused?

3 MR. EVANS: Yes, sir.

4 MR. CARTER: No, sir. Subject to recall.

5 THE COURT: Okay. Who do you have next?

6 MR. EVANS: Your Honor, I think this would be a
7 good point for us to read the prior testimony of Charles
8 "Porky" Collins into the record.

9 THE COURT: Okay. The court reporter has asked
10 me this question. That is going to be admitted as an
11 exhibit; isn't that correct?

12 MR. EVANS: Yes, sir.

13 THE COURT: There is no necessity for her to
14 take that down again, is it? The transcript is going to
15 be in the record.

16 MR. EVANS: There is already a transcript of
17 it. We, we don't ask that it be transcribed again.

18 MR. CARTER: May we approach, Your Honor.

19 (MR. EVANS, MR. HILL, MR. HOWIE, MR. CARTER AND MR.
20 DEGREY APPROACHED THE BENCH FOR THE FOLLOWING BENCH CONFERENCE
21 HAD OUTSIDE THE HEARING OF THE JURY.)

22 MR. CARTER: Your Honor, if memory serves me
23 correct, at the last trial, as soon as Odell finished
24 testifying you gave some kind of notice to the jury that
25 testimony of this nature, testimony has to be looked upon
26 with suspicion.

27 THE COURT: But I don't think it is going to
28 meet the test. We will talk about that. Let's let the
29 jury go out and talk about that in a minute.

1 (THE BENCH CONFERENCE WAS CONCLUDED.)

2 THE COURT: Ladies and gentlemen, there is a
3 matter I've got to hear outside y'all's presence. I will
4 ask if y'all will, to go to the jury room.

5 (THE JURY LEFT THE COURTROOM. PROCEEDINGS CONTINUED AS
6 FOLLOWS:)

7 MR. CARTER: Your Honor, under the
8 circumstances, never mind.

9 MR. DEGREY: We will waive our request for the
10 instruction.

11 THE COURT: Okay. Now let's go back to the
12 question I asked. As I recall, the last time Mr.
13 Collins' testimony was a transcript, was entered as an
14 exhibit. So therefore it could go to the jury, which of
15 course, it has to do. And the -- there is no -- if it's
16 going to do that, there is no necessity of Miss Thomas
17 taking it again, is it?

18 MR. DEGREY: I'm sorry, Your Honor. It didn't
19 go in as an exhibit. It was just read into as any other
20 witness.

21 THE COURT: Okay. Well, I had thought we
22 entered it as an exhibit.

23 MR. EVANS: I thought we did too. I thought it
24 was entered as evidence. But I wouldn't -- I am not
25 sure. That is just what I had been thinking.

26 THE COURT: Do you object to it going in as
27 evidence?

28 MR. DEGREY: If it's going to be --

29 THE COURT: Although --

1 MR. DEGREY: If it's going to be presented as
2 testimony, then I don't think it is proper to send the
3 transcript in too.

4 THE COURT: That might lend more weight to it
5 than other witnesses, because it's in written form. That
6 may be correct.

7 MR. EVANS: As far as that goes, it could just
8 be introduced as an exhibit. And that by itself would
9 probably keep us from having to have it transcribed
10 again.

11 THE COURT: Okay. Well, I think our -- the
12 court reporter and I conversation was whether it ought to
13 -- it is going to have to be marked for identification
14 regardless so it will be -- it will be something in the
15 record to be preserved in the record.

16 It is a question, if it's not going to go to the
17 jury, then it ought to just be marked as an exhibit. But
18 if we do it even that way, do y'all see any necessity for
19 her taking it down again?

20 MR. DEGREY: I don't think so.

21 MR. EVANS: No, sir. It is going to be State's
22 Exhibit 115, Your Honor. It's already marked --

23 THE COURT: Let's don't send it to the jury.
24 Let's just mark it for identification.

25 And you do not have to take it down.

26 Are you ready?

27 MR. EVANS: Yes, sir.

28 (THE JURY RETURNED TO THE COURTROOM.)

29 (MR. WILLIAM BLACKMON WAS SEATED ON THE WITNESS STAND.)

1 THE COURT: Ladies and gentlemen, what you are
2 about to hear is the testimony of Porky Collins. Mr.
3 Collins is deceased, so he can't be here.

4 But his -- what he is going to testify to has been
5 preserved under oath at an earlier time, and they are
6 going to read that to you. You can consider this
7 testimony as you would any other testimony in this case
8 from any other witness.

9 MR. EVANS: For the record, before we get into
10 that, what is your name?

11 THE WITNESS: William Blackmon.

12 MR. EVANS: And how are you employed?

13 MR. BLACKMON: Investigator with the district
14 attorney's office.

15 MR. EVANS: And Mr. Blackmon, you are going to
16 be reading the portion of Mr. Collins' answers; is that
17 correct?

18 MR. BLACKMON: Yes, sir.

19 MR. EVANS: All right. Have you got State's
20 Exhibit 115 with you?

21 MR. BLACKMON: Yes, sir.

22 MR. EVANS: Okay. Let's, let's go ahead and
23 get started.

24 MR. DEGREY: Your Honor, before we get too far,
25 may we approach the bench?

26 THE COURT: Sure.

27 (MR. EVANS AND MR. DEGREY APPROACHED THE BENCH FOR THE
28 FOLLOWING BENCH CONFERENCE HAD OUTSIDE THE HEARING OF THE
29 JURY.)

1 MR. DEGREY: In the last trial when Mr.
2 Blackmon started, he read into the record the description
3 of Charles "Porky" Collins, being a white male, called to
4 testify as a witness.

5 We would just ask that he again do that so this jury
6 understands, because on identification we are going to at
7 least argue across racial identification as a problem
8 with Mr. Collins being able to identify Curtis Flowers or
9 any black man.

10 THE COURT: We are reading from the transcript.
11 Let's read the whole transcript.

12 MR. EVANS: Because that was --

13 THE COURT: Let me see it. Let me just look at
14 it.

15 (THE TRANSCRIPT WAS HANDED TO THE COURT.)

16 Why don't I just read that part?

17 MR. EVANS: That might be better if you read
18 that.

19 THE COURT: I'll read that sentence.

20 (THE BENCH CONFERENCE WAS CONCLUDED.)

21 THE COURT: This is kind of a preamble to what
22 you are going to hear.

23 The witness is Charles "Porky" Collins, a white
24 male, called to testify by the State of Mississippi,
25 having first been duly sworn, testified as follows,
26 to-wit.

27 Then I stated for him to state his name for the
28 record.

29 All right. You see where we are starting there,

1 where it says Direct Examination by Mr. Evans, I think.

2 MR. EVANS: Yes, sir.

3 (MR. EVANS AND MR. BLACKMON BEGAN READING THE
4 TRANSCRIPT.)

5 THE COURT: In light of the fact, as long as we
6 have been going, we are just going to break for lunch.

7 (COURT RECESSED FOR THE NOON HOUR.)

8 (PROCEEDINGS RESUMED IN OPEN COURT. MR. EVANS, MR. HILL,
9 MR. CARTER, MR. DEGREY AND THE DEFENDANT WERE PRESENT.)

10 (THE JURY RETURNED TO THE COURTROOM.)

11 THE COURT: Okay. Mr. DeGrey.

12 MR. DEGREY: I am picking up where I left off.

13 (THE READING OF THE TRANSCRIPT BY MR. DEGREY AND MR.
14 BLACKMON RESUMED. THE TRANSCRIPT WAS READ THROUGH ITS
15 CONCLUSION.)

16 THE COURT: Who do you have next?

17 MR. EVANS: Miss Beneva Henry. Your Honor, she
18 may need some help getting in the stand also.

19 THE COURT: Has she been sworn?

20 MR. EVANS: No, sir. She is in a wheelchair,
21 Your Honor. Would it be all right if she stayed in the
22 wheelchair?

23 THE COURT: That is fine. She just needs to be
24 where Miss Thomas can hear what she says.

25 (THE WITNESS ENTERED THE COURTROOM AND WAS ADMINISTERED
26 THE OATH.)

27 MR. EVANS: May I proceed, Your Honor?

28 BENEVA HENRY, Called on behalf of the State, having been
29 duly sworn, was examined and testified as follows:

1 DIRECT EXAMINATION BY MR. EVANS:

2 Q. Good evening, Miss Henry.

3 A. Good evening.

4 Q. I need you to speak as loud as you can so that the
5 ladies and gentlemen of the jury can hear you. Okay?

6 A. Okay.

7 Q. Where do you live?

8 THE COURT: Let her state her name. I didn't
9 do it.

10 Q. Miss Henry, if you would, state your name for the
11 record.

12 A. Beneva Henry.

13 Q. Miss Henry, where do you live?

14 A. 512 Camel Street.

15 Q. And is that -- that is the same place you --

16 A. Well, it used to be 512, but it's 504 now.

17 Q. Did they change the numbers?

18 A. Yes, sir.

19 Q. But you still live in the same location you did back
20 in '96.

21 A. Right.

22 Q. Miss Henry, do you remember the morning of the
23 murders at Tardy Furniture?

24 A. I do.

25 Q. At that time did you know a person by the name of
26 Curtis Flowers?

27 A. I know him when I see him. You know I just -- I
28 knew him.

29 Q. Yes, ma'am. Did you have an occasion on the morning

1 of the murders to see Curtis Flowers walk by your house?

2 A. I did.

3 Q. What time was it, as close as you can tell us?

4 A. Well, I know it was after 9:00, because that's when
5 I went on the porch. I say between 9:00, 9:15 and 9:30,
6 between 9:10 and to 9:30. I don't think it was 9:30 though.
7 I hadn't been out there long.

8 Q. So probably somewhere between 9:00, 9:00 and 9:15.

9 Would that be a pretty close estimate?

10 A. 9:00 or 9:15?

11 Q. Yes, ma'am.

12 A. That's close. That's about close enough.

13 Q. All right. What makes you remember the time?

14 A. Because I watched a soap program on t.v. It went
15 off at 9:00, and I went on the porch after it went off.

16 Q. Did you have company that morning?

17 A. I sure did.

18 Q. Who was visiting you?

19 A. Miss Latham.

20 Q. Okay. And were the two of y'all both outside when
21 the defendant, Curtis Flowers, walked by?

22 A. We went -- she was leaving.

23 Q. Okay.

24 A. But I was on the porch.

25 Q. Miss Henry, when you saw the defendant, Curtis
26 Flowers, walk by your house, was he walking toward downtown
27 where Tardy Furniture is?

28 A. He was going down the street. Right.

29 Q. Would you look in the courtroom and see if you see

1 the person that walked by your house that morning in the
2 courtroom?

3 A. I can look, but I can't see.

4 Q. You can't see good now?

5 A. Hum-hum.

6 Q. Has your eyesight gotten a lot worse since then?

7 A. It has. It is almost off.

8 Q. But you did know Curtis Flowers at that time.

9 A. I did know him when I see him.

10 Q. Yes, ma'am.

11 MR. EVANS: I'll tender the witness, Your
12 Honor.

13 CROSS-EXAMINATION BY MR. CARTER:

14 Q. Good evening, Miss Henry. I'm Ray Carter. Good
15 evening.

16 Miss Henry, do you remember talking to John Johnson and
17 giving a statement regarding what you saw?

18 A. I did.

19 Q. And --

20 A. I mean I do.

21 Q. That was in September that you talked to Mr.
22 Johnson. Is that fair to say?

23 A. Is that the police?

24 Q. Yes, ma'am.

25 A. Yes.

26 Q. He's investigator for Mr. Evans.

27 Now, I believe that when you talked to him there was a
28 Mr. Robert Jennings there also. Was it two guys or one guy
29 that you talked to? Do you remember?

1 A. I think it was two.

2 Q. Okay. Now, you saw Mr. Flowers some time after
3 9:00. And you live on Campbell Street.

4 A. Right.

5 Q. Now, Campbell Street ends at some point after it
6 passes your house; is that correct?

7 A. I think Campbell Street goes all the way down to
8 Church Street.

9 Q. Okay. Now, you do agree that Tardy's is on the east
10 side of Church Street; is that correct?

11 A. That's right.

12 Q. So in other words you can't -- you can't get on
13 Campbell and actually go to Tardy's without turning on another
14 road; is that correct?

15 A. That's correct.

16 Q. Okay. Now, the only place you saw Mr. Flowers was
17 on the -- on Campbell; is that correct?

18 A. Campbell Street.

19 Q. You didn't see him turn on Church Street?

20 A. I didn't.

21 Q. And you didn't see him turn on Carrollton Street or
22 Summer Street; is that correct?

23 A. That's correct.

24 Q. And isn't it also correct and a fact that he could
25 have turned right on Campbell and had he turned right on
26 Campbell, he would not have gone downtown; is that correct?

27 A. Right.

28 Q. I'm sorry. If he had turned right off Campbell on
29 to Church, he could not have gone downtown; is that correct?

1 A. If he had turned right?

2 Q. Yes, ma'am.

3 A. No, he couldn't have gone to town.

4 Q. Now, if he had turned left and stayed on Campbell,
5 he would not have been able to go to Tardy's, would he?

6 A. Now, what did you say then?

7 Q. Even if he had turned on, on Church and had gone
8 left instead of right --

9 A. You mean --

10 Q. Church Street does not go to Tardy directly; is that
11 correct?

12 A. Right.

13 Q. So he would have had to turn off Church and get on
14 some other street to get to Tardy; is that correct?

15 A. That's right.

16 Q. Okay. And you didn't see him on either Church or
17 any other street?

18 A. No, I just saw him.

19 Q. On Campbell.

20 A. When he passed my house.

21 Q. Yes, ma'am.

22 A. On Campbell Street.

23 Q. So the truth of the matter is that you don't really
24 know exactly where Mr. Flowers headed that morning; is that
25 correct?

26 A. I sure don't.

27 Q. But you had seen him prior to that morning walk
28 passed your house also; is that correct?

29 A. I just saw him passed my house one time.

1 Q. You just saw him pass one time and never anymore.

2 A. When he was going down the street. The first time
3 he was going down the street.

4 Q. Okay. You never saw him pass your house anymore any
5 other time.

6 A. Not that day.

7 Q. Not that day. On some other days you had seen him
8 pass your house before; is that correct?

9 A. Well, I had seen him pass before then.

10 Q. Yes, ma'am. Do you recall what Mr. Flowers had on?

11 A. As far as I remember, he had on some white shorts
12 and a, a shirt.

13 Q. Okay.

14 A. Shirt. I don't remember if it was striped or
15 flowered, but it was short sleeve.

16 Q. Okay. Okay. Now, when you saw Mr. Flowers that
17 morning he looked normal; is that correct?

18 A. Looked --

19 Q. Nothing unusual about him that morning, was it?

20 A. Nothing at all to me.

21 Q. One moment. I think I'm finished.

22 Now, Miss Henry, didn't you hear some sirens that day,
23 some police or sirens from ambulances or something?

24 A. I think so.

25 Q. And you heard those before you saw Mr. Flowers; is
26 that correct?

27 A. Right.

28 MR. CARTER: No further questions.

29 REDIRECT EXAMINATION BY MR. EVANS:

1 Q. Miss Henry, is your house on the east side of
2 Highway 51?
3 A. That's right.
4 Q. So if the defendant said he -- in a statement he
5 didn't go on the east side of 51 that morning, would it be
6 true?
7 A. He passed -- he passed my house, but he came from
8 across the hill.
9 Q. Okay. Tell us where he came from.
10 A. Well, he came from Silver Street to Campbell Street.
11 Q. From Silver to which?
12 A. My street. Campbell Street. But...
13 Q. Now, you and Miss Latham were standing out there; is
14 that correct?
15 A. On the porch.
16 Q. Did either one of y'all have any conversation with
17 the defendant about where he was going?
18 A. I think Miss Latham teased him about going to work.
19 MR. CARTER: Your Honor, I object to any
20 testimony from Miss Latham.
21 THE COURT: Sustained.
22 Q. (By Mr. Evans:) What did he say in relationship to
23 her comment?
24 A. He just laughed kind of.
25 Q. Did he say where he was going?
26 A. No, he didn't.
27 MR. EVANS: Nothing further, Your Honor.
28 THE COURT: Is she finally excused?
29 MR. EVANS: Yes, sir.

1 MR. CARTER: Yes, sir.

2 THE COURT: Okay. Who do you have next?

3 MR. EVANS: Roxanne Ballard.

4 MR. CARTER: May we approach?

5 (MR. EVANS, MR. HILL, MR. CARTER AND MR. DEGREY
6 APPROACHED THE BENCH FOR THE FOLLOWING BENCH CONFERENCE HAD
7 OUTSIDE THE HEARING OF THE JURY.)

8 MR. DEGREY: Has Miss Ballard been in the
9 courtroom?

10 MR. EVANS: No.

11 MR. DEGREY: She hasn't been?

12 THE COURT: I have looked. I have not seen her
13 here. I mean, I have over the course of the trial. I
14 have -- I have not observed her being in here.

15 (THE BENCH CONFERENCE WAS CONCLUDED.)

16 (THE WITNESS ENTERED THE COURTROOM, WAS ADMINISTERED THE
17 OATH AND WAS SEATED ON THE WITNESS STAND.)

18 THE COURT: State your name, please.

19 THE WITNESS: Roxanne Miller Ballard.

20 MR. EVANS: May I proceed, Your Honor?

21 THE COURT: Um-hum.

22 ROXANNE MILLER BALLARD, Called on behalf of the State,
23 having been duly sworn, was examined and testified as follows:

24 DIRECT EXAMINATION BY MR. EVANS:

25 Q. Miss Ballard, you need to speak kind of loud because
26 that mike does not amplify your voice.

27 A. Oh, okay.

28 Q. Miss Ballard, tell the ladies and gentlemen of the
29 jury where you live.

1 A. Winona, Mississippi.

2 Q. How long have you lived in Winona?

3 A. Most of my life except for college and about five
4 years. So over 30 years, 35 years.

5 Q. All right. Miss Ballard, you know why we are here.
6 Did you have any family relationship to any of the victims?

7 A. Yes. My mother was Bertha Tardy.

8 Q. Okay. And I'm going to get into it in a minute, but
9 did you have an occasion to do accounting work for the
10 business?

11 A. Yes, I did.

12 Q. Before we get into that, tell the ladies and
13 gentlemen a little bit about your educational experience in
14 accounting.

15 A. Well, my -- I have a B.A. in sociology from
16 Millsaps. And then I went back to school and completed the
17 pre-requisites to get in the masters program. And I received
18 a masters in accounting from Ole Miss.

19 Q. And I'm assuming that you were familiar with Tardy
20 Furniture Store.

21 A. Very familiar.

22 Q. Who owned the store?

23 A. My mother, Bertha Tardy.

24 Q. Tell the ladies and gentlemen of the jury a little
25 bit about how you were familiar with the store. What
26 connection did you have?

27 A. I was in the store from just when I was a few weeks
28 old, all the way up until four years ago when we closed the
29 store. I worked there dusting when I was a little child, all

1 the way up to doing accounting and going to market to help buy
2 furniture, pretty much anything you can think of.

3 Q. Okay. Did you at times work as a full-time employee
4 at the store?

5 A. Yes, I did.

6 Q. When was that?

7 A. As far as like full-time goes, not just for a week
8 here and a week there and on weekends. It would be from
9 October of '94 through February, March of '95.

10 Q. Did you continue to do bookkeeping work after that?

11 A. Yes, I did.

12 Q. What type of bookkeeping work would you do there at
13 the store?

14 A. Everything from doing the daily check-up sheet to,
15 to reconciling the ledgers to posting. Everything back then
16 was done manually. Mom never had a computer. So we did
17 everything manually. I did the sales tax reports, the payroll
18 tax reports, did the payroll, all of it.

19 Q. Okay. Were you familiar with the routine business
20 practices and normal operating and opening procedure of the
21 store?

22 A. Yes, I certainly was.

23 Q. Of course, Miss Tardy was your mother. Did you know
24 Carmen Rigby?

25 A. Yes, I did.

26 Q. How did you know her?

27 A. She worked there for 20 years.

28 Q. What was her job at the store?

29 A. Carmen was the credit manager. She waited on the

1 customers and sold furniture. She helped organize deliveries.
2 She went with us to furniture market. She did the check-up
3 sheets and some accounting. She did the collecting on the
4 phone. Any -- and did all the mail.

5 Q. In the 20 years that you knew her to work there, did
6 you have an occasion to see her writing and see daily sheets
7 that she had performed?

8 A. Yes. Of course.

9 Q. Were you familiar with her writing?

10 A. Yes.

11 Q. Tell the ladies and gentlemen of the jury a little
12 bit about what the normal operating procedure, the opening
13 procedure of the store was every morning.

14 A. Momma opened the store every day unless she was out
15 of town or sick or something. And she would unlock the front
16 door and walk -- about halfway back on that main side was a
17 panel on the wall with light switches. And she would turn on
18 the lights on that side.

19 And then walk on back to her office, turn on the light in
20 there. And then unlock the safe and get out the things that
21 you needed for daily operation. And then go put them up in
22 what we call the front office or the counter, whatever you
23 want to call it.

24 Q. Okay. What else would she do to get the store ready
25 to operate?

26 A. Well, the things she would get out of the safe were
27 like there is a little, metal drawer that went inside the
28 wooden drawer in the front office. She would get that. Then
29 we had a big account ledger book, and the receipt book and

1 then the deposit bag. And the deposit bag, of course, had the
2 deposit bag in there.

3 Then depending on if someone else would come in in the
4 meantime, she would either turn the lights in the other side
5 of the store on, and someone else would come in and take care
6 of that. It just kind of depended on when everybody got
7 there.

8 Q. Okay. The metal drawer that you described that she
9 would get out of the safe, what would it have in it?

10 A. The operating money for the store, the petty cash.

11 Q. Was there always operating money in the store?

12 A. Of course.

13 Q. What would be the least amount of money the store
14 would ever use to start off with?

15 A. \$300.

16 Q. And that is the least amount that would ever be in
17 the store.

18 A. If there were any less than that in there, it would
19 say so on the check-up sheet. It would be spelled out
20 exactly.

21 Q. Were you -- were you asked by investigators to look
22 at the check-up sheet?

23 A. Yes.

24 Q. Were you able to tell anything about it?

25 A. Yes.

26 Q. We will get into it in a minute, but were you able
27 to tell from that check-up sheet how much money would have
28 been in the store that morning when they opened up?

29 A. Yes.

1 Q. How much?

2 A. \$400.

3 Q. We'll go into some of this other in a minute. But I
4 want to show you Exhibit 42, S-42, and ask if you can identify
5 that.

6 A. It's the check-up sheet for July 15, 1996.

7 MR. EVANS: Your Honor, may I have the witness
8 step down?

9 THE COURT: (Nodded.)

10 These have been admitted, haven't they?

11 MR. EVANS: Yes, sir.

12 Your Honor, the exhibit that I'm fixing to put on
13 the chart is 42-A, for the record.

14 Q. (By Mr. Evans:) I want you to compare 42 that is in
15 your hand to 42-A and tell us if that is the same document.

16 A. It is.

17 Q. If you would, try to stand where everyone can see.
18 And if you would, explain that document for the jury.

19 A. This check-up sheet had a lot of different purposes.

20 Q. Excuse me. You can use this pointer if you want to.
21 Just mash the --

22 A. I'm not sure I know how. This? (Indicated.)

23 Q. Yes.

24 A. The first part up here is to make out the deposit
25 for the day. And it shows any cash sales, anything that has
26 been paid on someone's account and any other sort of
27 selections like charge-off account or late fees and stuff like
28 that. And that is the total deposit for the day.

29 And then down here is where the petty cash drawer is, is

1 detailed. And it shows the cash that should be in the drawer
2 on a normal basis. And then if there were anything taken out
3 for, like, to pay for Cokes or something like that, it would
4 list it right there. But there weren't any. So the normal
5 balance for the day would be \$300.

6 Then over here is what's actually in the drawer. And
7 this first line is -- says minus \$100 because there was an
8 extra \$100 in the drawer that day that shouldn't -- is not
9 normally part of the drawer. It was from the late fee box.

10 And then this first number \$260 is the larger bills,
11 10's, 20's, that would have been in the first slot that had
12 currency in it. The next one is the 5's. The next one is the
13 1's. This is quarters, dimes, nickels and pennies. And the
14 total of all this, if you left off the \$100, would be \$400.

15 But because this \$100 was from the petty cash box, which
16 sat up on the counter, then they put it in as a minus so you
17 could balance back to the \$300 that, that belonged in the
18 petty cash drawer on a normal basis.

19 Q. When would that document have been prepared?

20 A. On the morning of July 16.

21 Q. The same morning of the murders?

22 A. Yes.

23 Q. I notice at the top that it has the day before
24 written in as far as date. Would you explain that, please?

25 A. Well, at -- on -- you can't write up a daily log of
26 what came in until after the day is over. And so they did it
27 the morning after every time.

28 Q. Okay. So --

29 A. So it was for the business on the preceding day.

1 Q. But it would have been prepared on the morning of
2 the 16th.

3 A. Yes. The next morning when you got ready to go to
4 the bank to make your deposit. It would have been prepared in
5 the morning.

6 Q. All right. If you would, take your seat again for a
7 minute, please.

8 A. (Complied.)

9 Q. Now, the cash drawer that this \$400 would have been
10 in, where was that cash drawer located?

11 A. In the -- we called it the front office or the
12 counter. It was like a u-shaped counter, and there is a
13 wooden drawer that pulled out that was part of the counter.
14 And the metal tray fit down in there.

15 Q. Did you have an occasion to examine that cash drawer
16 after all of this?

17 A. Yes, I did.

18 Q. What was missing?

19 A. The currency. The coins were there but no currency.

20 Q. So all of the bills were gone.

21 A. Yes.

22 Q. Do you know of anything else that was missing out of
23 the safe?

24 A. There was -- there was one deposit bag, a green
25 deposit bag that was no longer in there.

26 Q. Do you know how much money was in it?

27 A. No, I do not.

28 Q. This was not the normal daily bag, --

29 A. No.

1 Q. -- was it? Did you have an occasion to see the
2 daily bag again?

3 A. Yes.

4 Q. Where was it located when you saw it?

5 A. On that u-shaped counter over on the left side.

6 Q. Was that --

7 A. When you are standing in the counter.

8 Q. Was that a normal place for it to be?

9 A. No.

10 Q. Where would it normally have been after the deposit?

11 A. Inside that drawer that pulls out at the back,
12 behind the metal tray.

13 Q. Now, have you had a chance to examine the deposit
14 slip that Miss Rigby went to the bank and did that morning?

15 A. Yes.

16 Q. Does it correspond with the number that was just on
17 the check-up sheet that you --

18 A. Yes. Definitely.

19 Q. I want to next hand you Exhibit 44. If you would,
20 examine that. And while you are examining it, is 44-A a copy
21 of what you're holding?

22 A. Yes, it is.

23 Q. While this Exhibit 44-A is on the easel, would you
24 tell the ladies and gentlemen of the jury what it is?

25 A. It's a paycheck written out to Curtis Flowers by my
26 mom.

27 Q. Is that signed by your mother?

28 A. Yes.

29 Q. What's the amount of the check?

1 A. The net amount is 82.58. \$82.58.

2 Q. The next document I want to hand you is Exhibit 43.
3 And I'm going to place 43-A on the easel. If you would, tell
4 the jury what 43-A is.

5 A. It's Curtis Flowers' time card.

6 Q. And what does it show as far as when he worked and
7 how many hours?

8 A. It starts on July 29 -- excuse me, June 29, 1996,
9 and he worked that day. Wasn't there Monday. Worked Tuesday,
10 Wednesday. 17 11/12 hours. 17 hours and 55 minutes.

11 Q. Does it show anything about him being paid any money
12 in advance?

13 A. Yes. He was paid \$30 cash on 6-29.

14 MR. EVANS: Your Honor, may I have the witness
15 step down again, please?

16 THE COURT: Okay.

17 (THE WITNESS STEPPED DOWN FROM THE WITNESS STAND.)

18 Q. I'll next show you Exhibit 38-A and ask that you
19 examine this. Can you tell the ladies and gentlemen of the
20 jury what that is?

21 A. My mother's desk and the safe.

22 Q. Where was the safe located?

23 A. In the very back in her office.

24 Q. And at what point every day would that safe be
25 unlocked?

26 A. When momma got there.

27 Q. And what would be taken out of it?

28 A. Little metal tray that fit inside the wooden drawer
29 in the office and the deposit bag that had the deposit book in

1 there and accounts receivable ledger, which is a big book and
2 receipt book.

3 Q. Okay. I'll next show you Exhibit 28-A and ask you
4 to describe what this is and what it shows.

5 A. This is Carmen's office right here, her desk. And
6 that's Carmen's purse. And there is the little box I was
7 telling about awhile ago and the receipt book and the accounts
8 receivable book. And that's the wooden drawer right there
9 where the money drawer went.

10 Q. Point the wooden drawer out again.

11 A. Right here.

12 Q. And this would have been the drawer that the money
13 should have been in.

14 A. Yes.

15 Q. Exhibit 29-A, what is this exhibit?

16 A. That's the wooden drawer that's been pulled out, and
17 that's the metal tray that I keep talking about. And this is
18 where the currency would have been, the larger bills and the
19 5's and the 1's. And normally the deposit bag would be back
20 there.

21 Q. Okay. I notice a white piece of paper where one of
22 the bills would have been. What is that?

23 A. That's a piece of paper off of a Serta note pad.
24 And it had written on there late fees \$100, which is where --
25 how I know to put that \$100 is on the check-up sheet. It was
26 in Carmen's handwriting.

27 Q. And all of the bills were missing.

28 A. Yes.

29 Q. You can have a seat again, please.

1 A. (Complied.)
2 Q. So the only thing that would have been in the drawer
3 on the morning of the murders that was extra would have been
4 the late fee \$100 that was in there.
5 A. The only thing extra --
6 Q. Extra.
7 A. -- in there. Is that what you said?
8 Q. Yes.
9 A. Yes. That's correct.
10 Q. So the 300 that was in there, that would have been
11 in there every morning.
12 A. Right.
13 Q. I am going to hand you Exhibit 52 for identification
14 and ask if you can identify this.
15 A. It's the ticket from Coast to Coast for the
16 batteries that...
17 Q. Do you know what batteries that bill is for?
18 A. The golf cart batteries that they had ordered and
19 purchased that were damaged.
20 Q. Is that the same batteries that the defendant
21 dropped off a truck and was going to have to pay for?
22 A. Yes, sir.
23 Q. How much is that bill for?
24 A. \$406.17.
25 Q. What is the date of that bill?
26 A. July 8, 1996.
27 Q. Okay. But it is for that previous date; is that
28 correct?
29 A. Yes, sir.

1 MR. EVANS: Your Honor, I would offer this
2 exhibit into evidence at this time.

3 MR. CARTER: No objection.

4 THE COURT: Let it be admitted.

5 (THE RECEIPT FOR BATTERIES FROM COAST TO COAST PREVIOUSLY
6 MARKED STATE'S EXHIBIT NUMBER 52 FOR IDENTIFICATION WAS
7 ADMITTED INTO EVIDENCE.)

8 Q. (By Mr. Evans:) I want to show you Exhibit S-36 and
9 ask you if you can identify this.

10 A. It's the deposit bag from the store.

11 Q. Is that the one that was normally used every day by
12 Carmen Rigby?

13 A. Yes, sir.

14 Q. Have you had an occasion since the murders to look
15 in that bag?

16 A. Yes, sir.

17 Q. Did it have a bank receipt in it from that morning?

18 A. Yes, sir.

19 Q. If you would, look in there and see if you see it at
20 this time.

21 A. It's right here.

22 Q. What does it show that receipt to be?

23 A. \$1,238.86.

24 Q. And that is the same amount that is on the check-up
25 sheet.

26 A. Yes.

27 Q. And I'm not sure -- I know I asked you who owned the
28 store. But the money that was missing from the store, whose
29 money was that?

1 A. My mother's. Bertha Tardy.

2 Q. The green money bag that was taken out of the safe,

3 whose property was that?

4 A. My mother's.

5 MR. EVANS: One moment, Your Honor.

6 Your Honor, I'll tender the witness.

7 MR. CARTER: No questions, Your Honor.

8 THE COURT: No questions?

9 MR. CARTER: No questions.

10 THE COURT: Okay. You may step down.

11 THE WITNESS: Am I finally excused or...

12 MR. CARTER: Finally as far as I'm concerned.

13 MR. EVANS: Yes, sir.

14 THE COURT: Yes, ma'am, you are.

15 THE WITNESS: From both sides.

16 THE COURT: From both sides. Um-hum.

17 MR. EVANS: Can we take a short break right

18 now?

19 THE COURT: We will take a short break, ladies

20 and gentlemen. I'll call you back in just a few minutes.

21 (A BREAK WAS TAKEN.)

22 (THE JURY RETURNED TO THE COURTROOM. MR. EVANS, MR.

23 HILL, MR. CARTER, MR. DEGREY AND THE DEFENDANT WERE PRESENT.

24 PROCEEDINGS CONTINUED AS FOLLOWS:)

25 THE COURT: All right. Mr. Evans, who do you

26 have next?

27 MR. EVANS: Your Honor, the State of

28 Mississippi will rest on its case in chief.

29 (THE MOTION FOR DIRECTED VERDICT WAS REPORTED BUT NOT

1 REQUESTED TO BE TRANSCRIBED HEREIN. TESTIMONY RESUMED AS
2 FOLLOWS.)

3 THE COURT: Are y'all ready now?

4 MR. CARTER: Yes, sir.

5 THE COURT: Who do you have first?

6 MR. CARTER: Mike McSparrin.

7 (THE WITNESS ENTERED THE COURTROOM AND WAS ADMINISTERED
8 THE OATH.)

9 THE COURT: Have a seat up there.

10 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

11 THE COURT: State your name, please, sir.

12 THE WITNESS: Mike McSparrin.

13 M-c-S-p-a-r-r-i-n.

14 MIKE MCSPARRIN, Called on behalf of the defendant, having
15 been duly sworn, was examined and testified as follows:

16 DIRECT EXAMINATION BY MR. CARTER:

17 Q. Where do you work at this time, Mr. McSparrin?

18 A. I work at the Criminal Information Center, which is
19 part of the Department of Public Safety for the State of
20 Mississippi.

21 Q. Where were you working back in July of 1996?

22 A. I was working at the Mississippi State Crime
23 Laboratory, which is also part of the Department of Public
24 Safety.

25 Q. Okay. And you were a fingerprint expert.

26 A. Yes, sir, I still am.

27 Q. Still are.

28 MR. EVANS: Your Honor, the State will accept
29 him as an expert in the field of fingerprints.

1 THE COURT: Okay. Do you accept that
2 stipulation?

3 MR. CARTER: Yes, sir.

4 THE COURT: Okay. The Court accepts him as an
5 expert in that field.

6 Q. (By Mr. Carter:) Tell the jury what it is you do,
7 Mr. McSparrin.

8 A. Today or what I did when I worked at the crime
9 laboratory?

10 Q. Crime lab. I'm sorry.

11 A. I was a latent examiner. That is a forensic
12 scientist, latent examiner, examined physical evidence for
13 presence or absence of latent prints.

14 Q. Okay. And what were you called upon to do in this
15 particular case, case involving Tardy Furniture store and
16 several people being killed?

17 A. The case was brought to the crime lab. And I was
18 requested to do some analysis, as far as comparison, some of
19 the latent lifts from the crime scene and also work some of
20 the physical evidence that was also submitted to the crime
21 laboratory.

22 Q. And what exactly did you receive and were asked to
23 do some comparison or process?

24 A. What I received was some latent lifts that were
25 taken from the crime scene and some known ink prints that were
26 taken from some individuals involved in this particular case.

27 Q. Okay. And what particular items did you do some
28 processing on?

29 A. Processed some shell casings, some bullets, a shoe

1 box, a bank bag and a bank receipt book.

2 Q. Okay. And, and did you receive some known prints of
3 Curtis Flowers?

4 A. Yes, I did.

5 Q. And I believe you received some of someone else, is
6 that correct, of another person? Or do you recall?

7 A. Yes.

8 Q. Who was that person? Do you remember?

9 A. That was a Simpson. Doyle Simpson.

10 Q. Were there any latent prints of value that came from
11 the cases that you received?

12 A. Yes, there was.

13 Q. And were you able to, to connect anybody to those?

14 A. As far as a comparison for identity?

15 Q. Yes, sir.

16 A. No, I was not.

17 Q. And with respect to the, the bank bag or the bank
18 receipt or the shoe box, were you able to make any comparisons
19 or identify anyone?

20 A. No.

21 Q. One moment.

22 So you found no matches for either Curtis or Doyle
23 Simpson. Is that fair to say?

24 A. That is correct.

25 Q. Now, what is it about fingerprints that allow
26 somebody in your profession to actually connect a person to,
27 to a particular item? Is there something about his hands that
28 is unique to every individual?

29 A. Well, with the science of fingerprint

1 identification, each and every one of us is unique in the
2 fingerprint, the pattern, the identification characteristics
3 that we have on the end joints on the underside of our hands.
4 This has been used for better than a century to identify
5 individuals.

6 Q. Okay. Is the shoebox, for instance, is the outside
7 of it a good surface for fingerprints?

8 A. It depends on which shoebox. Some surfaces on some
9 shoeboxes are good, and some are not quite as good.

10 Q. Now, with respect to fingerprints, is there some
11 kind of life span of fingerprints that experts in your field
12 know about, or is there a life span?

13 A. Just the length that latent prints can be left on a
14 surface?

15 Q. Right.

16 A. There has been instances where fingerprints have
17 been left on porous paper items well in excess of 40 years.

18 Q. Is there any way to, to age prints or tell how old
19 they are that you are aware of?

20 A. Scientifically, no.

21 Q. Now, what about on a window, interior of a window?
22 Is that a good place for prints to be left?

23 A. That is a good surface, yes.

24 Q. One moment.

25 Mr. McSparrin, do you remember how many latent prints
26 that you had to compare?

27 A. Latents of value, 17. I believe 17 or 16.

28 Your Honor, if I could refer to my notes for a second, I
29 could give you the exact number.

1 Sixteen latents of value.

2 Q. And tell the jury what you mean by latents of value?

3 A. Of course, latents are fragment fingerprints that
4 are accidentally left on surfaces. And latents of value are
5 these fingerprints that are of enough quality and quantity to
6 be able to be used for an identification.

7 Q. Okay. And despite having 16 or 17, none actually
8 were connected to Mr. Flowers; is that correct?

9 A. None of these were identified to this particular
10 individual. No.

11 MR. CARTER: We tender.

12 CROSS-EXAMINATION BY MR. EVANS:

13 Q. Good evening, Mr. McSparrin.

14 A. Good afternoon.

15 Q. Basically, you didn't have any evidence to
16 contribute in this case, is that correct, after your
17 examinations?

18 A. As far as the evidence that I --

19 Q. Yes, sir.

20 A. -- that I looked at?

21 Q. Yes, sir.

22 A. No, sir. I did not identify any individual in this
23 particular case.

24 Q. You didn't go to the scene, did you?

25 A. No, sir, I didn't work the scene. No, sir.

26 Q. Now, as an expert, there have been testimony from
27 Melissa Schoene that some of the items that she tested, for
28 instance, the glove compartment that a gun was stolen out of,
29 was a textured surface, and the surface itself was dusty and

1 cracked. Would you expect to find any fingerprints on a
2 surface like that?

3 A. No, sir. That is not a very good surface.

4 Q. Now, the scene of this murder where four people were
5 murdered is a business. Would you expect to find many prints
6 of all types of customers and employees at a place like that?

7 A. Yes.

8 Q. Now, as far as prints or partial prints or anything
9 on shell casings, if I steal your .380 automatic, and I go
10 shoot somebody, I won't have any reason to have touched the
11 shells that were in it, would I?

12 A. If the weapon is already loaded, no, sir.

13 Q. So my prints wouldn't be on them, would they, from
14 handling on the gun and shooting?

15 A. If you did not load the weapon, your prints probably
16 would not be on the casings or the bullets.

17 MR. EVANS: Nothing further, Your Honor.

18 MR. CARTER: No further questions.

19 THE COURT: Is he finally excused?

20 MR. CARTER: Finally excused.

21 MR. EVANS: Yes, sir.

22 THE COURT: You are free to go, sir.

23 Who do you have next?

24 MR. CARTER: Wayne Miller.

25 (THE WITNESS ENTERED THE COURTROOM.)

26 THE COURT: You were sworn, weren't you?

27 THE WITNESS: Yes, sir.

28 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

29 THE COURT: State your name, please, sir.

1 THE WITNESS: Horace Wayne Miller.

2 HORACE WAYNE MILLER, Called on behalf of the Defendant,
3 having been duly sworn, was examined and testified as follows:

4 DIRECT EXAMINATION BY MR. CARTER:

5 Q. Mr. Miller, how are you presently employed?

6 A. Well, I'm retired from the highway patrol, and I do
7 some part-time work as an investigator.

8 Q. Okay. How long were you with the highway patrol?

9 A. Thirty-five years.

10 Q. How many years were you investigator?

11 A. Probably close to 20, maybe 18.

12 Q. In that period of time you where there, were you Mr.
13 Matthews' boss?

14 A. I was.

15 Q. Now, you went to the scene of the crime; is that
16 correct?

17 A. That is correct.

18 Q. And did you get there before or after Mr. Matthews?

19 A. After Mr. Matthews.

20 Q. Okay. How long did you stay there that day?

21 A. How long did I stay at the scene of the crime?

22 Q. Yes, sir.

23 A. Well, I was there off and on.

24 Q. Who was in charge during the period of time you were
25 there? Was it you or Mr. Hargrove or -- before the crime lab
26 got there?

27 A. We were assisting the, the police department, which
28 is Mr. Hargrove.

29 Q. Now, y'all also went to Connie Moore's house on July

1 20; is that correct?

2 A. I'm sorry.

3 Q. Did you go to Connie Moore's house at any point?

4 A. We, we did. I can't tell you the exact date or

5 time.

6 Q. Okay. How many times did you go?

7 A. I -- we went twice.

8 Q. Okay. And what did you find on each occasion and

9 obtain, if anything?

10 A. The -- we did find the shoebox of the Fila shoes.

11 Q. And did you take it away?

12 A. Yes.

13 Q. Did you personally do it or somebody else did it?

14 A. I think someone else carried it. And then later on,

15 we identified it and sent it to the crime lab.

16 Q. Okay. Did you find any coins or currency?

17 A. I did find some currency in the headboard of the

18 house.

19 Q. Okay.

20 A. In the bedroom.

21 Q. I'm sorry. Did you take it, or did you leave it?

22 A. I, I gave the money back to Miss Moore.

23 Q. Okay. And did you take some other items at that

24 time or another time?

25 A. At this time that is, I don't recall anything else

26 that I took.

27 Q. Okay. Why, why did you go? Do you recall why you

28 went there?

29 A. Well, we knew that that is where Curtis Flowers

1 stayed.

2 Q. And so did you go looking for Mr. Flowers? Were you
3 looking for something else?

4 A. No. We were looking for the evidence pertaining to
5 the crime at Tardy's.

6 Q. Did you find any?

7 A. The Fila shoes and the fact that we found some
8 money.

9 Q. You found some Fila shoes at the house.

10 A. No. No. I'm sorry. The box.

11 Q. Now, you are originally from Winona, aren't you?

12 A. That's correct.

13 Q. And you knew Porky Collins for years prior to the
14 killings at Tardy; is that correct?

15 A. I knew of Porky Collins.

16 Q. Did --

17 A. I had been gone from Winona for quite a few years.

18 Q. Okay. And gone -- you talking about living in
19 Greenwood?

20 A. I was living in Greenwood.

21 Q. Which is about 20 miles away.

22 A. It's about 30.

23 Q. About 30. Now, at some point, did you show Mr.
24 Collins some pictures?

25 A. Yes, I did.

26 Q. And that was when? Do you recall?

27 A. I can't tell you the date on it. It's all
28 documented but --

29 Q. Do you have your notes with you?

1 A. I do not.

2 Q. Could you dispute that it happened around August 24,
3 1996?

4 A. If that is what the exhibit exists -- exhibit
5 portrays, then that is when it occurred.

6 Q. Okay. Now, now, who put this photo array together?

7 A. I did.

8 Q. And where did Mr. Collins look at it at?

9 A. At the highway patrol station in Greenwood in my
10 office.

11 Q. Okay. And did -- are you sure it wasn't at Winona
12 Police Department? Or did he look more than once?

13 A. Well, now that you mention that, I'm not really sure
14 which location we were in.

15 Q. Okay. Now, are you sure you only showed him a photo
16 array of several pictures on one occasion or was it several
17 occasions?

18 A. It was just one occasion.

19 Q. Okay. Now, how did Mr -- let's assume it happened
20 at Winona Police Department since you are not sure. How did
21 Mr. Collins get there? Do you know?

22 A. No, I do not know.

23 Q. You didn't bring him there, did you?

24 A. I did not.

25 Q. And you don't know whether John did or not, John
26 Johnson did or not?

27 A. I can't answer that.

28 Q. I'm sorry, sir.

29 A. I can't answer that.

1 Q. Okay. Thank you. And did you also show a photo
2 line-up to a lady by the name of Catherine Snow?
3 A. I don't think I did that one.
4 Q. Okay. Do you recall there being a woman who worked
5 someplace who said that she might have seen someone?
6 A. Yes, I'm very familiar with Catherine Snow seeing --
7 Q. Someone?
8 A. -- Mr. Flowers there at the car where the gun was
9 stolen from. I remember that.
10 Q. How do you know it was Mr. Flowers she saw?
11 A. Through her statements. And with the other
12 investigators, they told me.
13 Q. Okay. So you read her statement.
14 A. Yes. I looked over her statement.
15 Q. Okay. Did you participate in taking that statement?
16 A. I don't think I did. No.
17 Q. Were you present when it was taken?
18 A. I was not, but I'm not sure now. I don't recall
19 whether I was there or not.
20 Q. Okay. Now, isn't it fair to say some weeks passed
21 before you showed Mr. Collins a photo line-up?
22 A. Well, if it was on August 24, that would be correct.
23 Q. Okay. When did you meet Mr. Flowers?
24 A. On the 16th day of July, something around 12-noon or
25 right shortly after the four people were killed.
26 Q. Okay. And y'all took some pictures or somebody took
27 some pictures then, didn't they? Somebody took some pictures
28 of Mr. Flowers then; is that correct?
29 A. I can't answer that, because I don't know. I don't

1 recall.

2 Q. Okay. How did you -- how did you get the pictures
3 you used in the photo array?

4 A. I don't know where we had them. We obtained it from
5 someplace. It may have been from -- I don't know. I don't
6 know where we got it from.

7 Q. So you are not sure, but you can't dispute that some
8 pictures might have been taken on the 16th or 17th of 1996,
9 can you?

10 A. I wouldn't dispute that, because I, I don't know.

11 Q. Do you ordinarily take pictures?

12 A. We do.

13 Q. Do you ordinarily take them yourself?

14 A. Sometimes I do. And sometimes an another
15 investigator may do that.

16 Q. Okay. Now, you are higher rank than Mr. Matthews;
17 is that correct?

18 A. I was a lieutenant, and he was a master sergeant.

19 Q. Forgive me. I don't know the rank things. That
20 means you are higher; is that correct?

21 A. I was one grade higher than he.

22 Q. How many line-ups did you show Mr. Collins?

23 A. I only remember one.

24 Q. Okay. Did you make any notes?

25 A. I just -- I initialed that, and I don't remember
26 whether I made any notes. I do know that he identified -- Mr.
27 Collins identified Mr. Flowers in the line-up.

28 MR. CARTER: Your Honor, may I have this marked
29 for identification?

1 THE COURT: Sure.

2 (THE WRITTEN NOTES OF WAYNE MILLER WERE MARKED
3 DEFENDANT'S EXHIBIT NUMBER 7 FOR IDENTIFICATION.)

4 MR. CARTER: May I approach the witness, Your
5 Honor?

6 Q. (By Mr. Carter:) Can you look at that and identify
7 it for me?

8 A. Yes, I can. That is -- that is my notes.

9 Q. Okay. So can you look at your notes and tell us how
10 many times you showed a photo line-up to Mr. Collins?

11 A. The first one -- first line-up was at 11:00, 11:00
12 and the --

13 Q. And did he pick -- I'm sorry.

14 A. And then the second one was at 11:15.

15 Q. Did he pick Mr. Flowers in the first one?

16 A. No, he did not.

17 Q. Who did he pick?

18 A. Well, he picked Number 1 and Number 3, according to
19 these notes.

20 Q. Okay. Now, you don't -- I'm sure you don't recall
21 who those were at this point, do you?

22 A. I, I don't.

23 Q. And in the second line-up, what time was that one?

24 A. At 11:15.

25 Q. Okay. Your Honor, I move for admission of this
26 Exhibit 7 into --

27 MR. EVANS: I'd like to see it. I may not have
28 any objection, but I...

29 No objection.

1 THE COURT: Let it be admitted.

2 (THE WRITTEN NOTE OF WAYNE MILLER PREVIOUSLY MARKED
3 DEFENDANT'S EXHIBIT NUMBER 7 FOR IDENTIFICATION WERE ADMITTED
4 INTO EVIDENCE.)

5 Q. (By Mr. Carter:) You have any idea how many
6 pictures were in each line-up, Mr. Miller, best you can
7 recall?

8 A. There would have been six.

9 Q. Is that -- the number six, is that something that is
10 customarily done?

11 A. Customarily it's six.

12 Q. Okay. Now, how did you come about putting that
13 photo line-up together?

14 A. How did I come about putting it together?

15 Q. Yes. What were your --

16 A. I just took the photographs and had them displayed
17 in a folder.

18 Q. How did you come about choosing the six people you
19 put in each one?

20 A. Just took those at random of same, same type of
21 build and pretty much the same, you know, the same
22 characteristics of the -- of the suspect, which was Flowers.

23 Q. Okay. So you, you made the photo line-up with
24 the -- using the characteristics of Mr. Flowers instead of
25 using the characteristics of, of the description of the person
26 that the witnesses say they saw? Were you given --

27 A. Well, yeah, we did that. I mean that is what I'm
28 telling you. We used -- we went by what we -- the information
29 we had. And we did not put someone in there that was out of

1 character.

2 Q. Okay. Now, let -- I don't mean to argue, but I
3 think we are saying something different. Now, isn't it the
4 rule that the photo line-up is supposed to be based on the
5 description that will -- given the police department of the
6 suspect and not just some person you believe is a suspect?
7 What was the description you were given of the person that had
8 been seen at the car?

9 A. As a black male that was not -- just a black male
10 with features that -- but we had already seen Mr. Flowers. We
11 knew who the suspect was.

12 Q. I understand what you are saying, but I thought the
13 photo line-up was supposed to be based on the description that
14 witnesses gave you and not some person you think is a suspect.
15 So --

16 A. We already had the description.

17 Q. But what is -- you said he was a black male. What
18 else?

19 A. Well, that he was not of just real dark skin.

20 Q. Okay.

21 A. And we chose those as well as we could from what,
22 what we had.

23 Q. Okay. So that is the extent of the description that
24 you received. Okay. Now, by the time you did this photo
25 line-up, do you know if there were -- if Mr. Flowers' picture
26 had been on television or in the newspapers?

27 A. I can't answer that. I don't know.

28 Q. And do you know whether a reward had been offered by
29 that time?

1 A. I, I don't know. I didn't have anything to do with
2 the reward. I don't know. I don't know when that was posted
3 or advertised.

4 Q. Okay. How many times did you personally talk to Mr.
5 Collins? I might have asked that before. I apologize if I
6 did.

7 A. I think that is the only occasion that I had --
8 well, no, I had talked to him prior at some point.

9 Q. Before showing him the photo line-up.

10 A. I think I had. I'm pretty sure I had, because I had
11 received the receipt from him that he had -- where he had come
12 by Tardy's and seen the suspect out in front. And then he
13 went on to one of the automotive places and purchased
14 something. And then I got the receipt back from him, and I
15 don't know exactly -- that was after the homicides.

16 Q. Okay. Did you audiotape -- I'm sorry, videotape Mr.
17 Collins selecting Mr. Flowers from the second line-up?

18 A. Did I videotape him? I don't recall. No, I don't
19 think so.

20 Q. Okay. Did you have audio tape running?

21 A. I can't answer that either.

22 Q. Did you make any copious notes of what Mr. Collins
23 said and what you said to Mr. Collins or what John Johnson
24 said to Mr. Collins?

25 A. You are talking about in the line-up?

26 Q. During the line-up.

27 A. That would have been the notes that you just
28 presented.

29 Q. Okay. That's the notes you, you took. Okay. Did

1 you have Mr. Porky Collins to sign or write out his own
2 statement stating how sure -- if sure he was of the photo
3 identification?

4 A. I don't -- I can't answer that either.

5 Q. But you don't recall it, do you?

6 A. I don't recall it.

7 Q. Now, isn't it a fact that the fillers, the
8 non-suspects in a line-up, are supposed to resemble the
9 suspect, that is supposed to be similar characteristics?

10 A. Some of the same characteristics but you --

11 Q. Why is that so?

12 A. So you won't just have one out there that would be
13 something -- that you would just deliberately stand out above
14 the others.

15 Q. Right. You don't want him to stand out because the
16 rules are that, that there can't be suggestibility; is that
17 correct?

18 A. Right. That's what I'm saying.

19 Q. And did you do that in this particular instance?
20 And did you make sure that the fillers, the non-suspects'
21 photographs, bears a resemblance and did not stand out in
22 terms of Mr. Flowers' photograph?

23 A. We don't -- I don't -- we did not intend for any one
24 particular person in there to stand out.

25 Q. And is it your testimony that Mr. Flowers didn't
26 stand out in any way?

27 A. No, I don't think so.

28 Q. Now, isn't it a fact that Mr. Flowers' head on the
29 photograph that Mr. Porky picked him from was bigger than

1 everybody elses? There was a larger picture of Mr. Flowers.

2 A. I, I don't know if it was any larger than the others
3 or not. If it was, it was not intended to be any different
4 than the others.

5 Q. Isn't it a fact that y'all had more than one picture
6 of Mr. Flowers to actually use in this photo line-up?

7 A. More to use or more than was used?

8 Q. In other words, are you telling the jury you had
9 only one picture of Mr. Flowers that could be used for the
10 photo line-up? Or were there several pictures and you just
11 selected one from several?

12 A. I don't know that I selected from several. We used
13 what we had. And I know we had a -- we had some just paper
14 photographs, maybe that was not clear enough. And then we had
15 some colored photos, regular colored photographs.

16 Q. So to clarify, you had more than one photograph of
17 Mr. Flowers to pick from. Is that fair to say?

18 A. Well, we probably had more than one, but I don't
19 know how many more.

20 MR. CARTER: Okay. One moment, Your Honor.

21 Your Honor, may I have this marked for
22 identification?

23 THE COURT: Okay.

24 (A COPY OF THE PHOTO LINE-UP WAS MARKED DEFENDANT'S
25 EXHIBIT NUMBER 8 FOR IDENTIFICATION.)

26 Q. (By Mr. Carter:) Mr. Miller, can you look at this
27 and tell me whether it looks like -- well, look at it and tell
28 me if you can identify it.

29 A. That is a copy of the --

1 Q. Photo line-up?

2 A. -- photo line-up.

3 MR. CARTER: Now, I move for admission of it
4 into evidence, Your Honor.

5 MR. EVANS: I have no problem. I intended to
6 introduce the original, but I have no problem if he wants
7 to introduce the copy.

8 THE COURT: Well, if we have an original, the
9 original ought to be introduced.

10 MR. EVANS: I have a original that we are going
11 to introduce.

12 MR. CARTER: I have never seen it.

13 MR. EVANS: That is not true.

14 MR. CARTER: I have never seen the original.

15 MR. EVANS: You saw it when you came to our
16 office and looked at it.

17 MR. CARTER: I don't recall seeing it.

18 I guess at this point, Your Honor, can we have the
19 original marked for --

20 MR. EVANS: No objection.

21 THE COURT: Right. The original can go into
22 evidence. Copy will still be marked for identification.

23 (THE ORIGINAL PHOTO LINE-UP WAS MARKED DEFENDANT'S
24 EXHIBIT NUMBER 9 AND ADMITTED INTO EVIDENCE.)

25 Q. (By Mr. Carter:) Mr. Miller, does that look like
26 the original? Can you identify that?

27 A. Yes. That is the original that we did.

28 Q. Now, can you look at that? Isn't Curtis Flowers'
29 face, isn't that a larger shot of Curtis Flowers' face than

1 any of the other six people, five people?

2 A. Well, it may be a little larger, but it doesn't --

3 Q. My question is is it larger.

4 A. It's a little larger, yes.

5 MR. EVANS: Now may he finish his answer, Your
6 Honor? He was cut off on his answer.

7 MR. CARTER: Go ahead.

8 A. It's a little larger as far as the photograph goes,
9 but it does not change up any of the other people in the
10 line-up.

11 Q. Okay, sir. How tall is Number 1, sir?

12 A. I can't answer that, because I don't have my notes
13 for that.

14 Q. How much he weighs?

15 A. I can't answer that either.

16 Q. How tall is Number 2?

17 A. They are all about the average -- some of those are
18 not so much larger. There may be a closer shot. But the
19 photograph in itself may have been taken a little closer than
20 some of the others. That makes it look larger.

21 Q. Mr. Miller, is there any way to look at this photo
22 array based on what I have here and tell whether these people
23 have similar sizes, similar heights, similar weights? In
24 fact, their hair is not even the same; is that correct?

25 A. That's correct. Some of the hair is different than
26 others. They are all different. All six of them are
27 different from each other.

28 Q. Well, how, how are they similar to the suspect, if
29 the hair is different? We don't know how much they weigh. We

1 don't know how tall they are. How do we know whether they are
2 similar like it is supposed to be?

3 A. Well, they are all just different. They are not six
4 pictures of the suspect. They...

5 Q. But don't they supposed have similar characteristics
6 so that it won't be suggestible which one is Mr. Flowers?

7 A. It's -- it just has to be the photographs, that you
8 are not identifying any one particular person.

9 Q. Okay. Now, Mr. Miller, isn't it fair to say that
10 Number 5's hair is braided?

11 A. Number 5. Yes, it's braided hair.

12 Q. Number 3's hair is braided also.

13 A. Number 3 is...

14 Q. Braided or something other than --

15 A. Yeah.

16 Q. Now, Mr. Miller, had you desired to, you could have
17 videotaped the eyewitness identification so that the jury
18 could have seen it if you wanted to; is that correct?

19 A. Probably could have.

20 Q. Okay. You also could have audio-taped it?

21 A. I could have done that.

22 Q. Okay. Now, before you showed Mr. Collins the
23 photograph, what exactly did you say to him?

24 A. I just told him we had a photo spread that we would
25 like for him to look at to see if he could identify the man
26 that he saw in front of Tardy's that morning of the murders.

27 Q. Okay. Is that in your notes?

28 A. No, I just know what I -- what we talked about.

29 Q. Okay. So you didn't put that in your notes.

1 A. I mean that was the purpose that I was going to show
2 him the spread, to see if he could identify anyone in there as
3 being the same person that he saw in front of Tardy's. And he
4 did that.

5 Q. I understand. Now, Mr. Miller, isn't it fair to say
6 that our memories are fallible, that they fade, they don't
7 remain the same as time passes? Is that fair to say?

8 A. Well, it is. But something like this you -- pretty
9 much you know. You remember the biggest part of it.

10 Q. Now, isn't it fair to say that picking somebody from
11 a photo line-up as a suspect of four killings is a pretty
12 serious matter, isn't it?

13 A. It is.

14 Q. And all police officers are taught, aren't they, to
15 memorialize, to crystallize in some kind of way what is being
16 said so that no one will have to rely on just memory? Isn't
17 that a fact?

18 A. Well, not necessarily. I mean -- this was a very
19 simple thing. You know, Mr. Collins, can you identify anyone
20 in this photo line-up of being in Tardy's -- in front of
21 Tardy's the morning of the murders? And he did.

22 Q. Is there any rule that precludes or set forth that
23 officers should not make notes of what the administrator of a
24 photo array says or what the person making the identification
25 says?

26 A. I did make notes. You just introduced those.

27 Q. Did you write also what Mr. Collins said?

28 A. I don't recall doing that. If you don't have it, I
29 don't have any notes now.

1 Q. Now, I understand -- well, let me ask you this.
2 After Mr. Collins made a selection, did either you or Mr.
3 Johnson have Mr. Collins to write out a statement stating how
4 he came about selecting Mr. Flowers and how definite he was
5 about what he saw and to put his signature to it, to such a
6 document?

7 A. I can't recall. I don't know whether we did or not.

8 Q. And would it have been improper to do so?

9 A. It would not have been improper to do so.

10 Q. In fact, it would have been good -- a good report
11 that set forth what took place. And we would not have to rely
12 on anybody's memory; is that correct?

13 A. That's correct.

14 Q. Now, as to John Johnson, now, you do know that Mr.
15 Johnson work for the D.A.'s office; is that correct?

16 A. That's correct.

17 Q. Now, in your capacity, is it fair to say that you
18 were a neutral police officer just searching for facts and
19 trying to do your job, solve this crime?

20 A. Very much so.

21 Q. You don't have any allegiances to either Doug Evans
22 or Mr. Flowers. Is that correct to say?

23 A. No. Not on this crime or any other crime I ever
24 went to.

25 Q. Right. Because you don't work for either side. You
26 don't work for either Mr. Flowers or for the prosecution.

27 A. I work for the state, the people of the State of
28 Mississippi.

29 Q. Well, now, it was your understanding that Mr.

1 Collins only had a quick, quick glimpse of a suspect; is that
2 correct?

3 A. You are talking about in front of Tardy's?

4 Q. Right. He said he had a --

5 A. I know he was passing by Tardy's and he saw someone
6 that he identified -- later on identified as being Curtis
7 Flowers.

8 Q. And he said he only got a quick glance -- a glimpse
9 of the person. Is that what he told you?

10 A. It wasn't a very long -- you know, he didn't observe
11 him for any lengthy period of time.

12 Q. Didn't he say it was a quick, a quick --

13 MR. EVANS: Your Honor, I think we are getting
14 into hearsay.

15 THE COURT: Sustained.

16 Q. Do you recall whether he identified any clothing of
17 the person he saw?

18 A. No, I don't.

19 Q. Do you agree, Mr. Miller, that suspect's photograph
20 should be selected that don't bring unreasonable attention to
21 the suspect?

22 A. I would agree with that.

23 Q. And do you also agree that the non-suspects in a
24 photo line-up should be based on their resemblance to the
25 description that was given of the suspect?

26 A. As close as you can get with, with what you have to
27 make that photo line-up.

28 Q. And don't you agree that the photo line-up procedure
29 should be documented?

1 A. They were.

2 Q. So the answer is yes.

3 A. Yes.

4 Q. And if possible, it should be taped in some kind of
5 way. Would you agree with that?

6 A. That would be to the discretion of the investigating
7 officer, and that was not done in this one by me.

8 Q. But if it was videotaped or audio-taped, we wouldn't
9 have to rely on the memory.

10 MR. EVANS: Your Honor, that has been asked and
11 answered.

12 THE COURT: We have been over this two or three
13 times. Let's move on.

14 MR. CARTER: One moment.

15 Q. (By Mr. Carter:) You knew who the suspect was,
16 didn't you?

17 A. Yes, I did.

18 Q. Isn't it a fact that the administrator of a photo
19 line-up doesn't have to know who the suspect is?

20 A. Say that again.

21 Q. Isn't it a fact that the administrator of a photo
22 line-up, the person that put the pictures together and show
23 them, doesn't have to know who the suspect is?

24 A. He doesn't necessarily have to know.

25 Q. In fact, wouldn't you agree that it is better if
26 they don't know? If they don't know, they can't -- there is
27 no chance of any suggestibility.

28 MR. HILL: Objection to relevancy on that.

29 THE COURT: Sustained. Plus the fact it was a

1 statement, not a question.

2 MR. CARTER: I'm sorry, Your Honor. I didn't
3 hear you.

4 THE COURT: It was a statement, not a question.
5 You have to ask questions.

6 MR. CARTER: One moment.
7 I tender Your Honor.

8 CROSS-EXAMINATION BY MR. EVANS:

9 Q. Good evening, Mr. Miller.

10 A. How are you today?

11 Q. We have worked both sides, haven't we?

12 A. We have.

13 Q. I believe now -- the defense didn't go into this,
14 but I believe you are doing a lot of private investigative
15 work for the defense; is that correct?

16 MR. CARTER: Your Honor, I object to that as to
17 not being relevant.

18 THE COURT: Well, you asked him about it.

19 MR. CARTER: I didn't ask him what else he did.

20 THE COURT: You asked him what he was doing
21 now.

22 Q. (By Mr. Evans:) You are working for a defense
23 attorney, criminal defense attorney; is that correct?

24 A. Right. I do that.

25 Q. We still get along fine, don't we?

26 A. Fine. We do.

27 Q. Even for the other side, do you see anything
28 improper in how you conducted the photo spread that you showed
29 to Porky Collins?

1 A. No, I do not.

2 Q. Did you follow proper procedure?

3 A. I did.

4 Q. Did you follow the descriptions that have been given
5 to officers by Catherine Snow and Porky Collins in attempting
6 to form that line-up?

7 A. I did.

8 MR. EVANS: May I pass this to the jury, Your
9 Honor?

10 THE COURT: It's been admitted.

11 (MR. EVANS HANDED DEFENDANT'S EXHIBIT 9 TO THE BAILIFF TO
12 BE PASSED TO THE JURY.)

13 Q. (By Mr. Evans:) Porky Collins positively identified
14 Curtis Flowers out of that line-up, didn't he?

15 A. He did.

16 Q. And in the previous line-up he said that it was the
17 same complexion as one other person and a similar hairline but
18 not as far back; is that right?

19 A. That's correct.

20 Q. But this is the only picture that he identified and
21 said that is the person I saw.

22 A. He immediately identified that one.

23 Q. And I'm assuming that your main goal when you
24 prepare one of these line-ups is an attempt to be fair.

25 A. That is correct.

26 Q. And did you do that in this case?

27 A. I did that.

28 Q. You were also asked awhile ago about being impartial
29 and not working with the district attorney's office. We work

1 together all the time, don't we?

2 A. Twenty-five years. Twenty years.

3 Q. Have you ever known me to do anything other than try
4 to be fair?

5 A. No, sir.

6 Q. Has it ever been your policy to videotape
7 identification like this?

8 A. No, it's not.

9 Q. Don't you feel that that might put undue pressure on
10 a witness trying to pick somebody out if they felt they were
11 being videotaped?

12 A. It has it's advantages and disadvantages, and that
13 would be one of the disadvantages.

14 Q. During this investigation, you discovered that
15 Curtis Flowers wore size 10 1/2 shoe; is that correct?

16 A. That is correct.

17 Q. I believe you found out that Connie Moore's boys
18 wore a 7 and a size 12; is that correct?

19 A. That is correct.

20 Q. And that Doyle Simpson wore a size 12; is that
21 correct?

22 A. That's correct.

23 Q. Now, the evidence that you found at Connie Moore's
24 house that was relevant to this case was what evidence?

25 A. Well, it would be the Fila shoebox. And the, the
26 money that Connie Moore had in her bed, the head of her bed.
27 And that money was -- I, I can't tell you exactly how much
28 money it was but \$400, \$300 or \$400. I'm not sure.

29 Q. Okay. I want to hand you Exhibit 79-A, which has

1 been identified as the shoebox. That is the shoebox that
2 y'all recovered from Connie Moore's house, isn't it?

3 A. That was recovered at that house. Yes.

4 Q. And I believe you were actually the investigator
5 that discovered that y'all were looking for Fila shoes; is
6 that correct?

7 A. That's correct.

8 Q. Tell the ladies and gentlemen of the jury how you
9 first discovered that it was a Fila shoe track.

10 A. Well, the -- we sent the tracks to the crime lab,
11 and they were able to tell us what type shoe. They went
12 through their research and were able to tell us, along with
13 the fact that we had witnesses that had seen Curtis Flowers
14 wearing that shoe.

15 Q. Okay.

16 A. That type shoe.

17 Q. So based on the witnesses that you had and the
18 evidence in the lab, you went looking for Fila shoes.

19 A. That's correct.

20 Q. And that box was found at the house that the
21 defendant was living in.

22 A. That's correct.

23 MR. EVANS: One moment, Your Honor.

24 That is all we have from this witness, Your Honor.

25 REDIRECT EXAMINATION BY MR. CARTER:

26 Q. Mr. Miller, do you have any notes of what Porky
27 Collins told you?

28 MR. HILL: That is immaterial.

29 A. I had already put that in. You have already

1 admitted that.

2 MR. CARTER: He asked him about it.

3 THE COURT: About his notes?

4 MR. CARTER: He asked him if he followed the
5 description that Porky Collins gave him. I am asking him
6 if he made some notes of the description.

7 MR. EVANS: He has already been asked about the
8 notes. He said he didn't have.

9 MR. HILL: But our objection was this is
10 improper for --

11 MR. CARTER: I retract then, Your Honor.

12 Q. (By Mr. Carter:) What is the description, Mr.
13 Miller?

14 A. I'm sorry.

15 Q. That you followed, that Porky Collins gave you.

16 A. We already -- we already knew what Curtis Flowers
17 looked like. He was already a suspect.

18 Q. What is the description that Mr. Collins gave you?

19 A. Well, he told us he was a black male and that he, he
20 was kind of a lighter skinned than dark. And that he was of
21 medium build.

22 Q. And lighter skin. What, what would it mean?

23 A. What would it mean?

24 Q. I mean it's not dark, but --

25 A. Be between real light, medium or real dark. And he
26 said medium.

27 Q. Okay. So that's my color or -- I am trying to
28 picture it. What have you in your mind?

29 MR. EVANS: Your Honor, this -- never mind. I

1 don't even object.

2 Q. (By Mr. Carter:) One other question. Now, you also
3 made a comment about videotaping would put undue pressure on
4 witnesses. How do you know that?

5 A. Well, it could. I'm not -- I'm saying it could have
6 its advantages, and it could have its disadvantages.

7 Q. So it could put undue pressure, and it could not put
8 undue pressure on them.

9 A. It could put undue pressure on a person who was
10 talking to --

11 Q. And in someone instances, it could not. Is that
12 fair to say?

13 A. It could not.

14 MR. CARTER: No other questions.

15 THE COURT: Is he finally excused?

16 MR. CARTER: Yes. As far as I'm concerned.

17 MR. EVANS: Yes.

18 THE COURT: You are free to go, Mr. Miller.

19 THE WITNESS: Thank you, sir.

20 THE COURT: Who do you have next?

21 MR. CARTER: Essie Campbell.

22 THE COURT: I'm sorry. I didn't hear you.

23 MR. CARTER: Essie Campbell.

24 (THE WITNESS ENTERED THE COURTROOM AND WAS ADMINISTERED
25 THE OATH.)

26 THE COURT: Have a seat right up here, ma'am.

27 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

28 THE COURT: State your name, please.

29 THE WITNESS: Essie. Essie Ruth Campbell.

1 ESSIE RUTH CAMPBELL, Called on behalf of the Defendant,
2 having been duly sworn, was examined and testified as follows:

3 DIRECT EXAMINATION BY MR. CARTER:

4 Q. And Miss Campbell, how are you employed?

5 A. I work at Winona Manor.

6 Q. How long have you been there?

7 A. For 17 years.

8 Q. Okay. And were you working there on July 16, 1996?

9 A. Yes.

10 Q. And what hours were you working that day? Do you
11 recall?

12 A. Seven to three.

13 Q. Do you know Doyle Simpson?

14 A. Yes.

15 Q. Are you related?

16 A. Yes.

17 Q. How?

18 A. He is my brother.

19 Q. And on the day that the killing took place at
20 Tardy's, before, before that, what kind of car did Doyle
21 Simpson have back at that time?

22 A. He -- I don't know the name of it, but he was
23 driving a, a light -- he have a brown and light brown car.

24 Q. One moment. If you saw a picture of it, would you
25 recognize it?

26 A. Yes.

27 (MR. CARTER HELD UP A BOARD WITH A PHOTOGRAPH OF A CAR ON
28 IT.)

29 Q. Does this picture tell you -- the right side of this

1 exhibit, do you recognize that car?

2 A. Yes.

3 Q. Is that it?

4 A. Yes.

5 Q. Did you happen to be on the outside of the building
6 on the day that the killings took place at Tardy's?

7 A. Yes, I was out on the front.

8 Q. And while outside, did you see anything?

9 A. I saw his car go up the highway.

10 Q. What highway was that?

11 A. That was 82.

12 Q. Okay. And where is your building located in
13 comparison to 82?

14 A. It's coming right off 51.

15 Q. And about the time -- what time was it when you saw
16 this car?

17 A. Between 9:30 and 10:00.

18 Q. And did you see the car again?

19 A. It went back down the highway.

20 Q. About how late was that?

21 A. It wasn't -- it wasn't that late. Between --

22 MR. EVANS: I can't hear.

23 THE COURT: You are going to have to speak up,
24 ma'am.

25 A. It wasn't that late.

26 Q. I realize you are guessing. But was it -- as best
27 you can, how much later did you see it again? How much later
28 did you see it for the second time?

29 A. It was about -- it wasn't ten minutes apart. It

1 just went up and come right back down.

2 Q. Okay. Now, Mr. Simpson had he had that car for a
3 while?

4 A. Yes.

5 Q. You had seen him many times.

6 A. Yes.

7 Q. You knew it when you saw it; right?

8 A. Yes.

9 Q. You wouldn't lie on your brother, would you?

10 A. No.

11 Q. Were you offered anything to come in here and
12 testify?

13 A. No.

14 Q. You wouldn't lie for Curtis either, would you?

15 A. No.

16 MR. CARTER: No further questions.

17 CROSS-EXAMINATION BY MR. EVANS:

18 Q. Miss Campbell, I think defense counsel said he knew
19 you were guessing. Is that what you are doing? Are you
20 guessing at the time you saw the car?

21 A. No, I wasn't guessing. I saw the car.

22 Q. I know you are saying you saw the car, but are you
23 guessing at when you saw it, at the time?

24 A. It was between 9:30 and 10:00, because I went out to
25 get a patient.

26 Q. When did you come up with the 9:30 to 10:00?

27 A. Because I had went outside to get a patient off the
28 porch.

29 Q. Okay. Do you remember talking with John Johnson,

1 one of the investigators for the D.A.'s office?

2 A. Yes.

3 Q. Do you remember telling him 9:00?

4 A. It was between that time.

5 Q. Between what time?

6 A. Nine. Like I said, 9:30 and 10:00 when I seen Doyle
7 Simpson car.

8 Q. Why would you have told the investigator 9:00?

9 A. I can't remember telling him 9:00.

10 Q. Could have been 9:00. Could have been 10:00. Could
11 have been 11:00. Could have been 12:00. Is that right?

12 A. No, it couldn't have been that.

13 Q. If he was at work, it would have been kind of hard
14 for him to be driving by there while he was at work, wouldn't
15 it?

16 A. Yes, if he was at work.

17 Q. You are the defendant's aunt, aren't you?

18 A. Yes.

19 Q. His mother and you are sisters.

20 A. Yes.

21 Q. And basically, what you are saying is you say that
22 you saw Doyle's car sometime that morning, but you don't know
23 what time.

24 A. Like I said, between 9:30 and 10:00.

25 Q. Okay. That is what you are saying today. But you
26 hadn't said that at other times, have you?

27 A. I said it the last time I was in court.

28 Q. First time you gave -- told somebody that is not the
29 time you gave, is it?

1 A. What?

2 Q. The first time you told somebody that wasn't the
3 time you gave, was it?

4 A. I think the first time I testified I gave that time.

5 Q. Where is City Cafe located?

6 A. It's on 51.

7 Q. Okay. Now, which direction are you saying whenever
8 you saw the car that you saw?

9 A. It was going --

10 Q. Which direction was it going?

11 A. East on 82.

12 Q. Going which direction?

13 A. Going toward, like, McDonald's.

14 Q. Okay. You are not trying to say you ever saw
15 Doyle's car downtown that morning, are you?

16 A. No, because I was at work.

17 MR. EVANS: Nothing further, Your Honor.

18 MR. CARTER: Nothing further, Your Honor.

19 THE COURT: Is she finally excused?

20 MR. CARTER: Finally excused.

21 THE COURT: Ma'am, you are free to go.

22 Who do you have next?

23 MR. CARTER: Connie Moore.

24 THE COURT: Let's take just a short break. I
25 have something I have to do.

26 (A BREAK WAS TAKEN.)

27 (PROCEEDINGS RESUMED IN OPEN COURT. MR. EVANS, MR. HILL,
28 MR. CARTER, MR. DEGREY AND THE DEFENDANT WERE PRESENT.
29 PROCEEDINGS WERE AS FOLLOWS:)

1 THE COURT: I need the jury.

2 (THE JURY RETURNED TO THE COURTROOM.)

3 (THE WITNESS ENTERED THE COURTROOM AND WAS ADMINISTERED
4 THE OATH.)

5 THE COURT: Have a seat right there.

6 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

7 THE COURT: State your name, please, ma'am.

8 THE WITNESS: Connie Moore.

9 THE COURT: Miss Moore, you have to talk louder
10 than that. Okay?

11 THE WITNESS: Okay.

12 CONNIE MOORE, Called on behalf of the Defendant, having
13 been duly sworn, was examined and testified as follows:

14 DIRECT EXAMINATION BY MR. CARTER:

15 Q. Miss Moore, where are you living now?

16 A. 34 Old Highway 82 East, here in Winona.

17 Q. Where were you living back July 17, 1996?

18 A. 702-A Magnolia Drive.

19 Q. Who lived with you then?

20 A. Me and my kids.

21 Q. Okay. Name them.

22 A. LaMarcus. Marcus. Brittany. Marissa.

23 Q. Okay. And on the day that the people were killed at
24 Tardy's, were you interviewed by anyone?

25 A. Yes, sir.

26 Q. How many times? Was it the police or investigators?

27 A. Yes, sir.

28 Q. How many times were you interviewed by them? Do you
29 have any idea?

1 A. Well, Miss Vanhorn came over the house the day of.
2 I was at work. When I got off work, she came to the house.

3 Q. Where did she take you?

4 A. Down to Tardy's.

5 Q. Inside Tardy's?

6 A. Inside Tardy's.

7 Q. Do you know why you were taken inside?

8 A. No, sir.

9 Q. About what time was it?

10 A. I think it was about 4:00. It might have been about
11 4:00.

12 Q. You know Curtis Flowers.

13 A. Yes, sir.

14 Q. And did y'all have some kind of relationship back in
15 July 16, 1996?

16 A. Yes, sir.

17 Q. What was the relationship?

18 A. We were girlfriend and boyfriend.

19 Q. Were you living together?

20 A. Yes, sir.

21 Q. And how old were your children, as best you can
22 recollect, back then?

23 A. Thirteen, 11, 8 and, I think, 3.

24 Q. Okay. Now, did the police come to your house after
25 these murders?

26 A. Yes, sir.

27 Q. And do an investigation of these murders?

28 A. Yes, sir.

29 Q. How many times?

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1 A. It was a couple of times they came.

2 Q. Okay. And what, if anything, did they get when they

3 came the first time?

4 A. Nothing.

5 Q. And what, if anything, did they get the second time?

6 A. A shoebox.

7 Q. And did they find anything in your headboard?

8 A. Yes, sir.

9 Q. Okay. What did they do with that? They gave it

10 back to you?

11 A. Yes, sir.

12 Q. What was it?

13 A. Money.

14 Q. Whose money was it?

15 A. Mine.

16 Q. How did you get it?

17 A. Working.

18 Q. Now, did the police take any items from your house?

19 A. The shoebox.

20 Q. I'm sorry. Anything else, other than the shoebox?

21 A. No, sir.

22 Q. Okay. Now, do you know whether Curtis had any Grant

23 Hill Fila tennis shoes back then?

24 A. No, sir.

25 Q. Did you buy some?

26 A. Yes, sir.

27 Q. And who did you buy them for?

28 A. Marcus.

29 Q. What size were they?

1 A. 10 1/2. Well, I bought two. My daughter, I bought
2 her a pair. It was a 12. But when they came, it was two
3 boxes there. They only got the 10 1/2 box, not the 12.

4 Q. Okay. What size was the other box?

5 A. Twelve.

6 Q. Okay.

7 A. For my daughter.

8 Q. Your daughter.

9 A. Um-hum.

10 Q. Little girl. A little child's 12.

11 A. Um-hum.

12 Q. Okay. All right. Okay. And you bought her a pair
13 of 10 1/2 Fila Grant Hill tennis shoes for Marcus.

14 A. Yes, sir.

15 Q. Do you recall about when it happened, about when you
16 bought it?

17 A. In November.

18 Q. And do you have any idea about when he stopped
19 living with you?

20 A. In January.

21 Q. Okay. And as far as you know, did Mr. Flowers ever
22 wear any Grant Hill Fila shoes?

23 A. No, sir.

24 Q. Do you even recall -- strike that.

25 One moment.

26 Now, where was this shoebox located?

27 A. In a closet.

28 Q. Okay. And where was the money located?

29 A. In the headboard.

1 Q. Now, was it -- was the shoebox located in the same
2 place both times they came?

3 A. Yes, sir.

4 Q. Why were you keeping the shoebox?

5 A. Well, I had bows in it. I used to just keep them,
6 Christmas bows and hair bows.

7 Q. Okay. Now, when the police came to your house, did
8 they have a search warrant?

9 A. Yes, sir.

10 Q. They showed you one?

11 A. Well, they searched the house. They didn't get it,
12 but later on they come back.

13 Q. Did they have a search warrant when they came back?

14 A. Um-hum.

15 Q. You are sure?

16 A. Yes, sir.

17 Q. And you didn't have a problem with them -- did you
18 have a problem with them searching your house?

19 A. No, sir.

20 Q. So you more or less consented for them to do it.

21 A. Yes, sir.

22 MR. CARTER: I think I'm finished. One moment,
23 Your Honor.

24 Tender, Your Honor.

25 CROSS-EXAMINATION BY MR. EVANS:

26 Q. Good evening, Miss Moore.

27 A. Good evening.

28 Q. Now, when you were asked who was living with you,
29 you named yourself and four children; is that right?

1 A. Um-hum.

2 Q. You didn't name Curtis.

3 A. No, sir.

4 Q. Curtis Flowers was living with you, was he not?

5 A. Yes, sir.

6 Q. And I want to make sure that I got down what you

7 said. You said you had four children living with you. Give

8 me their names and their ages.

9 A. LeMarcus, I think he was --

10 THE COURT: Speak up, ma'am.

11 A. Marcus was 13. LeMarcus was 11. And Brittany was

12 3. And Marissa was 8.

13 Q. All right. Do you know of any reason why the

14 officers would say that, that Marcus was wearing a size 12

15 shoe when they checked him?

16 A. No, sir.

17 Q. Why would you buy him a size 10 1/2 if he was

18 wearing a 12?

19 A. That is what he was wearing, a 10 1/2.

20 Q. He wasn't wearing a 10 1/2 when the officers checked

21 him, was he?

22 A. Yes, sir.

23 Q. And the officers would be wrong about that.

24 A. Yes, sir.

25 Q. He was 13.

26 A. Yes, sir.

27 Q. Matter of fact, your other son was wearing a size

28 7 1/2, wasn't he?

29 A. No, sir. I think it was eight.

1 Q. You think?
2 A. Yes, sir.
3 Q. Are you are admitting that that shoebox, Fila, Grant
4 Hill, tennis shoe shoebox, came out of your house.
5 A. Yes, sir.
6 Q. Same house Curtis Flowers was living in.
7 A. Yes, sir.
8 Q. Curtis wore a size 10 1/2, didn't he?
9 A. No, sir.
10 Q. What did he wear?
11 A. Eleven.
12 Q. That's why he had a pair of 10 1/2's on when they
13 picked him up at the station the day of the murders, wasn't
14 it?
15 A. I don't know.
16 Q. But you would say anything to try to help him,
17 wouldn't you?
18 A. No, sir.
19 Q. Are you familiar with these shoes in Exhibit 125?
20 A. Yes, sir.
21 Q. Those are his, aren't they?
22 A. Yes, sir.
23 Q. Do you know they are 10 1/2's?
24 A. No, sir.
25 Q. How long did Curtis live with you after the murders?
26 A. It might have been a couple of months.
27 Q. Couple of months. Where did he go then?
28 A. Where did he move to?
29 Q. Yeah.

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1 A. To Texas.

2 Q. Did you move to Texas?

3 A. I went out there for a while. Yes, sir.

4 Q. I'm sorry. I still can't hear you.

5 A. I went out there for a while. Yes, sir.

6 Q. Did you live with him in Texas?

7 A. With his sister.

8 Q. Now, this money that was found in the headboard, why

9 was the money hidden in the headboard?

10 A. It wasn't hidden. It was just there. That is where

11 I kept my money.

12 Q. You kept your money in the headboard.

13 A. Yes, sir.

14 Q. How much money was there?

15 A. It was two-something.

16 Q. You don't know.

17 A. No, sir.

18 Q. If it was your money, why don't you know how much it

19 was?

20 A. I just don't.

21 Q. Where was Marcus living?

22 A. He had moved. Stayed with his father.

23 Q. Who is his father?

24 A. Vernon Peeples.

25 Q. Matter of fact, he was living with his father at the

26 time of the murders, wasn't he?

27 A. No, sir.

28 Q. You sure?

29 A. The murders happened --

1 THE COURT: Ma'am, I can't hear you, and I'm
2 right here.

3 THE WITNESS: Yes, sir.

4 Q. (By Mr. Evans:) He had already moved at that time.

5 A. Yes, sir. Wait a minute. He moved in January.

6 Q. January of '96?

7 A. Yes, sir.

8 Q. One moment.

9 Miss Moore.

10 A. Yes, sir.

11 Q. These shoes, Fila Grant Hill, 10 1/2's, actually
12 belonged to Curtis your boyfriend, didn't they?

13 A. No, sir.

14 Q. And your son that you claim you bought them for
15 already wore a size nearly two sizes bigger than that when you
16 bought those.

17 A. No, sir.

18 Q. You are telling the ladies and gentlemen of the jury
19 that you bought that pair of shoes that was in that box for
20 your son.

21 A. Yes, sir.

22 Q. You knew that Curtis was a suspect in a murder of
23 four people; is that right?

24 A. No, sir. Well, like I said, Mr. Goldman, one of the
25 victims that got killed, he was kin to me on both sides. So I
26 don't have no reason to lie.

27 Q. You knew that Curtis was a suspect in those murders,
28 didn't you?

29 A. I knew y'all had been coming by, you know.

1 MR. CARTER: Your Honor, I object. He is not
2 giving her any timeframe as to --

3 MR. EVANS: I think she understands.

4 MR. CARTER: Do you mind if I finish my
5 objection?

6 Q. (By Mr. Evans:) Do you know when I'm talking about?

7 THE COURT: Objection is overruled. She is on
8 cross-examination.

9 Q. (By Mr. Evans:) Do you know when I'm talking about?

10 A. No, sir.

11 Q. When the police were coming to your house, did you
12 know that Curtis Flowers was a suspect in the murder of four
13 people?

14 A. No, sir, because they brought the reward money
15 trying to tell us, you know, if we know anything, you know,
16 talk. So I didn't know.

17 Q. You want me and this jury to believe that you didn't
18 think Curtis was a suspect in those murders?

19 A. No, sir.

20 Q. That is a lie, isn't it?

21 A. No, sir.

22 Q. You knew he was a suspect, didn't you?

23 A. No, sir. Why would he bring the reward money to the
24 house?

25 Q. Why would they search your house if he wasn't a
26 suspect?

27 A. (No response.)

28 Q. Can you honestly sit there and tell me that you
29 didn't think he was a suspect?

1 A. (Inaudible response.)

2 COURT REPORTER: Judge, I didn't hear her
3 answer.

4 THE COURT: I'm sorry. I didn't either, ma'am.

5 A. Say what? Could you repeat the question?

6 Q. Can you sit there and tell me that you didn't think
7 Curtis Flowers was a suspect?

8 A. Yes, sir. When they were coming. Yes, sir.

9 Q. You knew they were looking for Fila shoes, didn't
10 you?

11 A. Yes, sir.

12 Q. Because they had found this box, this Fila shoebox
13 in your house, hadn't they?

14 A. Yes, sir.

15 Q. The box that you say the shoes belonged to your son.

16 A. Yes, sir.

17 Q. Answer one simple question for me. If you bought
18 those shoes for your son and you knew the police were looking
19 for them, why didn't you go get the shoes and give them to
20 him?

21 A. Well, I had asked my son did he have them. He had
22 testified once before.

23 Q. Answer my question. Why didn't you go get them?

24 A. He didn't know where they were.

25 Q. Those shoes that were in that box were destroyed,
26 weren't they?

27 A. No, sir.

28 Q. So that they couldn't be found. And you knew who
29 they belonged to, didn't you?

1 A. My son.
2 Q. No. Your son didn't wear that size.
3 MR. CARTER: Object to argumentative.
4 THE COURT: Sustained.
5 REDIRECT EXAMINATION BY MR. CARTER:
6 Q. Miss Moore.
7 A. Yes, sir.
8 Q. You have never been a police officer, have you?
9 A. No, sir.
10 Q. You have no idea when a person becomes a suspect, do
11 you?
12 A. No, sir.
13 Q. Now, were you around when -- did you see any police
14 measure your son's feet?
15 A. No, sir.
16 Q. So you don't have any idea if they did it or what
17 they found, do you?
18 A. No, sir.
19 Q. Now, you were asked about how much money you had.
20 Now, it's been ten years. So you did the best you could. You
21 knew it was close to -- you know it was 200-something, but you
22 don't know the exact amount; is that correct?
23 A. Yes, sir.
24 Q. And you are doing the best you can?
25 A. Yes.
26 Q. Thank you.
27 THE COURT: Is she finally excused?
28 MR. CARTER: Yes, sir.
29 THE COURT: Miss Moore, you are free to go.

1 Who do you have next?

2 MR. CARTER: Mary Ella Fleming.

3 (THE WITNESS ENTERED THE COURTROOM AND WAS ADMINISTERED

4 THE OATH.)

5 THE COURT: Ma'am, have a seat right here.

6 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

7 THE COURT: State your name, please.

8 THE WITNESS: Mary Ella Flemming.

9 MARY ELLA FLEMMING, Called on behalf of the Defendant,

10 having been duly sworn, was examined and testified as follows:

11 DIRECT EXAMINATION BY MR. CARTER:

12 Q. Miss Fleming, where are you from?

13 A. Winona.

14 Q. You know Clemmie Flemming?

15 A. That is my sister.

16 Q. Who is oldest - you or her?

17 A. I am.

18 Q. Do you remember the day the people got killed at

19 Tardy's?

20 A. Yes, sir.

21 Q. Did you see your sister that day?

22 A. Yes, sir.

23 Q. About what time did you see her?

24 A. About 7:30.

25 Q. And how do you know you saw her around that time?

26 A. Because she came over to my house that morning.

27 Q. Okay. And how long did she stay at your house?

28 A. All day.

29 Q. Do you have any idea about what time she left?

1 A. Around about 2:00 or 3:00 that evening.

2 Q. Did y'all learn something that happened at Tardy's
3 while she was at your house?

4 A. Yes, sir.

5 Q. And what did y'all do as a result of that?

6 A. We all jumped in the car and went down by Miss
7 Tardy's, by the furniture store. And it was a whole lot of
8 people sitting out. And I told her -- I said Clemmie, I said
9 we was talking about going down there. But I told her wait
10 till later on. And we didn't -- we never did go.

11 But when we did go, we found out Miss Tardy and them had
12 got killed. I said I'm glad we didn't go down there, because
13 we would have got caught in this. She said you know what, we
14 sure would have.

15 Q. You are sure she never went to Tardy's any time that
16 morning before the time that y'all went together.

17 A. If she did, she never did say anything to me.

18 Q. You know she was at your house at least from 7:00 in
19 the morning to about 2:00.

20 A. Yes, sir.

21 Q. Or whatever time she left.

22 A. Yes, sir.

23 Q. One moment.

24 Do you know how she left your house?

25 A. No, I don't.

26 MR. CARTER: One moment, Your Honor.

27 Tender Your Honor.

28 CROSS-EXAMINATION BY MR. EVANS:

29 Q. Good evening, Miss Flemming.

1 A. Hi.

2 Q. You don't deny that your sister Clemmie was pregnant
3 at the time of the murders, do you?

4 A. No, sir.

5 Q. Do you know a person by the name of Roy Harris?

6 A. Yes, sir.

7 Q. Isn't it a fact that Roy Harris drove your sister
8 down to Tardy's that morning to pay on a bill?

9 A. I -- if he drove her there, he drove her before she
10 came to my house. He didn't drive her at 7:30. She was at my
11 house at 7:30.

12 Q. It would have been kind of hard to drive her there
13 before the store opened, wouldn't it?

14 A. It would.

15 Q. So if he drove her there, it had to be when the
16 store was open.

17 A. If she went to Tardy's that morning, she didn't say
18 she did. She told -- she came to my house and told me. I
19 told her what my brother had told her. And I said -- she said
20 she was going to go down there.

21 I said well, let's wait and go later on. And she said
22 okay. But we never did go. When we went, it was after we
23 found out that Miss Tardy and them had got killed.

24 Q. Um-hum. What is your connection with the defendant,
25 Curtis Flowers?

26 A. I don't have no connection with him.

27 Q. You hadn't been to see him any?

28 A. No, sir.

29 Q. You are not connected to him by marriage?

1 A. No, sir.

2 Q. How long have you known Roy Harris?

3 A. I hadn't -- I really don't know him. I just know of
4 him.

5 Q. And according to you, your sister was with you all
6 day long.

7 A. Yes, sir.

8 Q. So if her and Roy Harris both agree that she went
9 down there --

10 A. Only thing --

11 MR. CARTER: Your Honor, object to that. There
12 is no testimony of that.

13 MR. EVANS: Your Honor, I asked her a simple
14 question.

15 THE COURT: Sustained.

16 Q. (By Mr. Evans.) You're disagreeing with both of
17 them?

18 A. Yes, sir.

19 MR. EVANS: I don't have anything further, Your
20 Honor.

21 MR. CARTER: No further questions, Your Honor.

22 THE COURT: Is she finally excused?

23 MR. CARTER: Yes, sir.

24 MR. EVANS: Yes, sir.

25 THE COURT: You are free to go, ma'am.

26 Who do you have next?

27 MR. CARTER: Latarsha Blissett.

28 One moment, Your Honor.

29 (MR. CARTER APPROACHED THE BENCH.)

1 MR. CARTER: Your Honor, can I have five
2 minutes, because I may not call her?

3 THE COURT: Okay. You can do that.

4 We will take five minutes. See where we go from
5 there.

6 (A RECESS WAS TAKEN.)

7 (PROCEEDINGS RESUMED IN OPEN COURT. MR. EVANS, MR. HILL,
8 MR. CARTER, MR. DEGREY AND THE DEFENDANT WERE PRESENT.

9 PROCEEDINGS RESUMED AS FOLLOWS:)

10 (THE JURY RETURNED TO THE COURTROOM.)

11 THE COURT: Who do you have next?

12 MR. CARTER: Latarsha Blissett.

13 (THE WITNESS ENTERED THE COURTROOM AND WAS ADMINISTERED
14 THE OATH.)

15 THE COURT: Have a seat over here, ma'am.

16 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

17 THE COURT: State your name, please.

18 THE WITNESS: My name is Latarsha Blissett.

19 LATARSHA BLISSETT, Called on behalf of the Defendant,
20 having been duly sworn, was examined and testified as follows:

21 DIRECT EXAMINATION BY MR. CARTER:

22 Q. Miss Blissett, would you spell the last name for us?

23 A. B-l-i-s-s-e-t-t.

24 Q. That microphone, I don't think it works. So just
25 talk up as best you can. We got it.

26 Now, I don't have many questions for you. But you do
27 know that at some point in time back in 1996, July 16, more
28 specifically, some people got killed at Tardy; is that
29 correct?

JLH

1 A. Yes.

2 THE COURT: Speak up, ma'am.

3 THE WITNESS: Yes.

4 THE COURT: Thank you.

5 Q. As a result of that, did some police officers or

6 somebody come talk to you?

7 A. Yes.

8 Q. And where were you when they came to find you?

9 A. At school.

10 Q. And what school would that be?

11 A. Winona High School.

12 Q. You still in high school; is that correct?

13 A. Yes.

14 Q. And where did these people -- where did you go with

15 these people?

16 A. They took me to Greenwood.

17 Q. And where is your high school located?

18 A. In Winona.

19 Q. Anybody else go with you? Who else was in the car

20 with you?

21 A. Just me, Miss Vanhorn and the guy that was driving.

22 Q. Okay. Did you -- did you call your mom?

23 A. Nope.

24 Q. Did you want -- did you make a effort to do so?

25 A. They didn't let me do anything.

26 Q. Okay. Once you got to Greenwood, what, what

27 happened?

28 A. They took me to the highway patrol place over there

29 in Greenwood, asked me some questions.

1 Q. As best you can recall, what did they try to get you
2 to do?

3 A. They asked me if I know Curtis Flowers and did I
4 know what size shoes and stuff he wore. Questions like that.

5 Q. Did they ask you what kind of shoes he wears?

6 A. No. They just asked me what size.

7 Q. Okay. And you didn't -- you told them you didn't
8 know.

9 A. I did not know.

10 Q. Okay. Did they talk to you about anything else?

11 A. They told me my name, social security number and
12 told me they knew I was trying to buy a new home.

13 Q. Okay.

14 A. And asked me did I know that it was a reward out and
15 I told them yeah.

16 Q. Okay. And despite that, you had no information to
17 give them regarding Mr. Flowers. Is that fair to say?

18 A. I didn't know nothing.

19 Q. Okay. Now, do you have a -- do you know Clemmie
20 Flemming?

21 A. Yes.

22 Q. How do you know her?

23 A. She is my cousin.

24 Q. And have you had any conversation with her about the
25 Curtis Flowers' case?

26 A. We talked on the phone about it.

27 Q. And what -- and what, what was said?

28 A. We just talked about what happened. And she was
29 telling me what she told the people that she had talked with.

1 Q. And did you find out whether or not she saw Mr.
2 Flowers doing anything?

3 A. She told me she did not see him.

4 Q. She told you she did not see him anywhere near
5 Tardy. Is that what she told you?

6 A. She told me she didn't see him downtown nowhere.

7 Q. And did she tell you why she was saying she saw him,
8 if she did see him?

9 A. Because she had got furniture from down there, and
10 the people that she talked with supposed to give her money to
11 pay off her furniture. Just give her money to do away with
12 the bill period. And she would be able to keep her furniture.

13 MR. CARTER: Okay. One moment. I think I'm
14 done.

15 We tender, Your Honor.

16 CROSS-EXAMINATION BY MR. EVANS:

17 Q. Miss Blissett, who is Earl Campbell?

18 A. Earl Campbell is my ex-boyfriend, now friend.

19 Q. Okay. Earl Campbell was your boyfriend when you
20 came up with this story, wasn't he?

21 A. Yes. He was my boyfriend at the time this happened.

22 Q. And he is the defendant's cousin.

23 A. Yes.

24 MR. EVANS: Nothing further.

25 MR. CARTER: No further questions, Your Honor.

26 Oh, oh, one other.

27 REDIRECT EXAMINATION BY MR. CARTER:

28 Q. One, Miss Blissett. The fact that Earl Campbell is
29 Mr. Flowers' cousin has nothing to do with whatsoever --

1 MR. EVANS: Object to leading.

2 THE COURT: Sustained.

3 Q. Are you telling the truth.

4 A. Yes.

5 MR. EVANS: Object. Self-serving.

6 THE COURT: Sustained.

7 MR. CARTER: One moment, Your Honor.

8 Q. Have you been offered anything to come here and
9 testify the way you testified today?

10 A. No.

11 Q. Thank you.

12 THE COURT: Is she finally excused?

13 MR. CARTER: Yes. As far as I'm concerned.

14 MR. EVANS: Yes, sir.

15 THE COURT: You are free to go, ma'am. Who do
16 you have next?

17 MR. CARTER: Harvey Freelon.

18 (THE WITNESS ENTERED THE COURTROOM AND WAS ADMINISTERED
19 THE OATH.)

20 THE COURT: Have a seat here.

21 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

22 THE COURT: State your name, please, sir.

23 THE WITNESS: My name is Harvey Christopher
24 Freelon.

25 HARVEY CHRISTOPHER FREELON, Called on behalf of the
26 Defendant, having been duly sworn, was examined and testified
27 as follows:

28 DIRECT EXAMINATION BY MR. CARTER:

29 Q. What is your occupation, Mr. Freelon?

1 A. I'm an attorney.

2 Q. Out of Jackson, Mississippi.

3 A. Yes. I currently practice in Jackson, Mississippi,
4 but throughout the whole state.

5 Q. What is the name of your firm?

6 A. Lumumba and Freelon, Attorney at Law.

7 Q. Do you remember Odell Holloman?

8 A. I remember the case as a whole. Now, to tell you
9 that I can point Odell -- is it Hallmon?

10 Q. Hallmon.

11 A. Hallmon. To tell you that I can point him out if he
12 walked in here today after five or six years, I could not.
13 But I remember the testimony and evidence that was presented
14 in the case and from talking to Mr. Hallmon at the time.

15 Q. Okay. Now, Mr. Hallmon sent your firm a letter; is
16 that correct?

17 A. That is absolutely correct.

18 Q. And did you in any way help him compose that letter,
19 the letter that he sent you?

20 A. Do you have a copy of that letter?

21 (MR. CARTER HANDED THE WITNESS A COPY OF THE LETTER
22 PREVIOUSLY MARKED DEFENDANT'S EXHIBIT NUMBER 6.)

23 Q. Exhibit 6.

24 A. This letter here. This letter actually arrived at
25 our office. No one from our office had ever spoken to Mr.
26 Hallmon before we actually received this letter. Now, I spoke
27 to Mr. Hallmon after I received this letter. We just up one
28 day received this letter from a person who said they were
29 Odell Hallmon.

1 Q. You hadn't met him before then?

2 A. No, I had not.

3 Q. Thank you.

4 A. Your welcome.

5 MR. CARTER: Tender.

6 CROSS-EXAMINATION BY MR. EVANS:

7 Q. Good evening, Mr. Freelon.

8 A. How do you do, Mr. Evans?

9 Q. You were one of the defendant's attorneys
10 previously; is that correct?

11 A. That is correct.

12 Q. And you do remember that -- and I can't remember
13 whether you or Mr. Chokwe Lumumba was the one that actually
14 questioned Odell Holloman at the trial. But do you remember
15 that Odell Hallmon was a defense witness?

16 A. Absolutely.

17 Q. And the purpose of his testimony was trying to
18 discredit Patricia Hallmon, his sister's testimony; is that
19 right?

20 A. Yes. That is what he did.

21 Q. Are you aware that he has admitted numerous
22 occasions since then that he lied and played that up in an
23 attempt to help Curtis Flowers?

24 A. I was made aware today that he has been lying since
25 that time.

26 Q. Okay. Have you been made aware though that he has
27 given testimony a couple of times that that was, in fact, a
28 lie, that he did it to help Curtis Flowers?

29 A. Right. I was given information today that he --

1 that he has since given information to say that Curtis gave
2 him a confession.

3 Q. Okay. Now, I don't think you would deny that you
4 met with Odell Hallmon several times over at Parchman, would
5 you?

6 A. Yes.

7 Q. You are saying you never met him?

8 A. At Parchman. Where exactly?

9 Q. While he was in custody before he testified as a
10 defense witness. You are not denying that you set down and
11 met with him several times, are you?

12 A. Okay. But which -- not in the Parchman down in
13 Parchman, Mississippi? But in Greenwood? What location?

14 Q. Anywhere.

15 A. I met -- I met with Mr. Hallmon after he sent us
16 this letter to go and speak with him about this letter.

17 Q. Okay. After he sent you the letter but before he
18 sent the defendant's mother a letter.

19 A. I don't know anything about a defendant's mother
20 letter. I remember that he sent us the letter.

21 Q. Okay.

22 A. We received the letter from Curtis. I mean from Mr.
23 Holloman.

24 Q. But you admit that you talked to him numerous
25 occasions, at least three different days while he was in
26 custody before he testified.

27 A. No. No. I do not admit to that.

28 Q. Don't?

29 A. I do not admit that I went to Parchman on three

1 different occasions.

2 Q. While he was a MDOC inmate. Let me phrase it like
3 that.

4 A. While he was a MDOC inmate, I don't recall speaking
5 with him on three different occasions while he was
6 incarcerated.

7 Q. You are just saying you don't recall that.

8 A. I don't recall speaking with Mr. Hallmon on three
9 different occasions. One occasion.

10 MR. EVANS: All right. Nothing further.

11 MR. CARTER: Nothing further, Your Honor.

12 THE COURT: Is he finally excused?

13 MR. CARTER: Yes, sir.

14 THE COURT: Mr. Freelon, you are free to go.

15 THE WITNESS: Thank you.

16 (THE TESTIMONY ON DECEMBER 3, 2007, WAS CONCLUDED.)

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COURT REPORTER'S CERTIFICATE

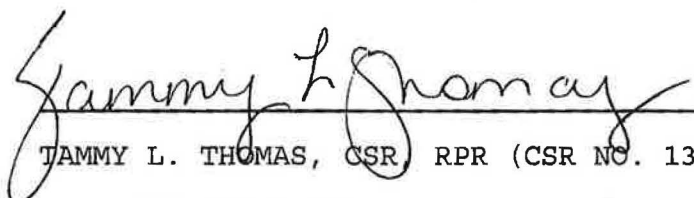
STATE OF MISSISSIPPI

COUNTY OF MONTGOMERY

I, Mrs. Tammy L. Thomas, Official Court Reporter for the Fifth Circuit Court District of the State of Mississippi, do hereby certify that the foregoing pages numbered 169-329 and 417-521 are a true, correct, complete and full transcription of my stenotype notes and tape recording taken in this matter, and that I have transcribed the same to the best of my skill and ability.

I do further certify that my certificate annexed hereto applies only to the original and certified transcript and electronic disks. The undersigned assumes no responsibility for the accuracy of any reproduced copies not made under my control or direction.

This the 23rd day of July, 2008.


TAMMY L. THOMAS, CSR RPR (CSR NO. 1304)
OFFICIAL COURT REPORTER
1882 Russell Road
Noxapater, Mississippi 39346

December 4, 2007

1 (ON DECEMBER 4, 2007, THE TRIAL RESUMED IN OPEN
2 COURT WITH ALL COUNSEL PRESENT WITH THE EXCEPTION OF MR.
3 CLYDE HILL, WHO WAS ILL, AND WITH THE DEFENDANT PRESENT.
4 THE COURT HEARD A MOTION BEFORE THE JURY WAS BROUGHT IN
5 CONCERNING THE TESTIMONY OF DEFENSE WITNESS STACEY WRIGHT.
6 FOLLOWING THE COURT'S RULING THAT THE OUT-OF-STATE WITNESS
7 WAS UNAVAILABLE PURSUANT TO THE RULES, THE JURY ENTERED THE
8 COURTROOM.)

9 BY THE COURT: Who will you have next?

10 BY MR. DE GRUY: The Defense calls Stacey Wright.

11 BY THE COURT: Ladies and gentlemen, this next
12 witness is a witness that the Court has ruled to be
13 unavailable. She is an out-of-state witness, and
14 because of certain factors, I have ruled that she is
15 unavailable to personally testify. She has given sworn
16 testimony in the past where she was questioned and
17 cross-examined. Under our rules, it can be, I have
18 ruled that it can be admissible so much in the same
19 manner as the Porky Collins testimony. This witness
20 will testify that way. All right.

21 (THE TESTIMONY OF STACEY WRIGHT WAS READ INTO THE
22 RECORD at the conclusion of which there was the following:)

23 BY THE COURT: Who do you have next?

24 BY MR. CARTER: One moment, Your Honor.

25 (Defense Counsel confer.)

26 BY MR. CARTER: We rest, Your Honor.

27 DEFENDANT RESTS

28 BY THE COURT: Rebuttal?

29 BY MR. EVANS: Yes, sir. Jerry Dale Bridges

Jerry Dale Bridges - DIRECT
first.

JERRY DALE BRIDGES,
upon being called to testify as a witness by the State of
Mississippi in REBUTTAL, having first been duly sworn,
testified as follows, to-wit:

BY THE COURT: State your name, please.

BY THE WITNESS: Jerry Dale Bridges.

DIRECT EXAMINATION BY MR. EVANS:

Q. Good morning, Mr. Bridges.

A. Morning.

Q. How are you employed?

A. Montgomery County Constable.

Q. Do you have any other businesses?

A. No, sir.

Q. Does your daughter have a business?

A. She did have. She doesn't any more.

Q. Okay. Well, back in -- well, in the past did you
and your daughter have a business?

A. Yes.

Q. What was that?

A. Crossroads Collection.

Q. And what is that business?

A. Well, it just collects bad debts where people, you
know, doesn't pay their bills or people file bad checks with
it to collect bad checks.

Q. Are you familiar with a bill that Clemmie Fleming
had at Tardy Furniture back in '96?

A. Yes, sir.

Q. Do you know whose names that bill was in?

Jerry Dale Bridges - DIRECT - CROSS

1 A. If I remember correctly, the bill was in Clemmie's
2 name, and her brother Robert was a co-signer on that
3 account.

4 Q. Do you know what happened to that bill?

5 A. I know it was filed in Justice Court. I don't
6 remember the month. It was in '97, I believe, in the
7 Justice Court system, and a judgment was rendered against
8 Robert Fleming. I think the Tardy's didn't file it because
9 Clemmie didn't have a job at the time and Robert did.

10 Q. Okay. So this bill was not dismissed. It was
11 actually turned over to your agency for collection; is that
12 correct?

13 A. Yes, sir. It wasn't dismissed.

14 BY MR. EVANS: Nothing further.

15 CROSS-EXAMINATION BY MR. CARTER:

16 Q. Constable Bridges, you said a judgment was
17 obtained by Tardy Furniture?

18 A. Yes.

19 Q. And what Court was that obtained from?

20 A. Montgomery County Justice Court.

21 Q. Were you present when it happened?

22 A. I am sure I was because in 20 years, I probably
23 haven't missed ten courts. I'm in court every time the
24 court, we hold court.

25 Q. Okay, so do you remember what was presented in
26 court? Now I understand that you are normally there. You
27 are telling me that you are usually in court, but do you
28 have any specific memory of being there on this day that
29 this judgment was obtained?

Jerry Dale Bridges - CROSS

1 A. I couldn't answer that. I don't know whether I
2 was there or not.

3 Q. But you do know that you don't really have any
4 memory at this point of whether you was there; is that
5 correct?

6 A. I can't remember whether I was there. That is
7 about 11 years ago.

8 Q. Okay. So how is it that you know a judgment was
9 obtained?

10 A. Because it's on our file in court.

11 Q. It was on your file, "judgment obtained"?

12 A. Yes.

13 Q. Okay, now what do you mean by Tardy's didn't file
14 it?

15 A. I didn't say they didn't file it. I said they
16 wouldn't file on Ms. Fleming because she was not working--

17 Q. -- okay, so the judgment was--

18 A. --therefore she couldn't get any money from her
19 being that she wasn't working.

20 Q. Okay, I am just trying to understand. So the
21 judgment was obtained against her brother, Robert?

22 A. Right.

23 Q. And as a constable, you didn't participate in any
24 way on the investigation of this case; is that correct?

25 A. On this case?

26 Q. On the Tardy murders, you didn't participate in
27 the investigation of that, did you?

28 A. I was out there for a short period of time, but
29 no, sir; I didn't per se go out and do any investigative

Jerry Dale Bridges - REDIRECT
1 work on any of the case.

2 BY MR. CARTER: Okay. Thank you.

3 BY MR. EVANS: Is that all?

4 BY MR. CARTER: Yes. I tender, Your Honor.

5 BY MR. EVANS: May I have this item marked for
6 identification, Your Honor?

7 BY THE COURT: Yes, sir.

8 (ABSTRACT FROM MONTGOMERY COUNTY JUSTICE COURT WAS
9 MARKED AS STATE'S EXHIBIT S-126 FOR IDENTIFICATION.)

10 REDIRECT EXAMINATION BY MR. EVANS:

11 Q. Mr. Bridges, I want to hand you Exhibit S-126. I
12 will ask you to examine that and see if you can identify
13 what it is?

14 A. Yes, sir. It's showing, it's an abstract from the
15 Court, Justice Court of Montgomery County of a judgment
16 rendered for Tardy Furniture Company against Robert Fleming
17 in the amount of \$450.00.

18 Q. And is that an abstract of the same judgment that
19 you have just told this jury about was a collection on the
20 bill that was owed to Tardy Furniture Company by Clemmie
21 Fleming?

22 A. Yes, sir.

23 BY MR. EVANS: I offer this exhibit into evidence,
24 Your Honor.

25 BY MR. CARTER: I need to see it first, Your
26 Honor.

27 (Pause while Mr. Carter reviews the exhibit.)

28 BY MR. CARTER: No objection, Your Honor.

29 BY THE COURT: Let it be admitted.

Randy Keenum - DIRECT
(ABSTRACT PREVIOUSLY MARKED AS STATE'S EXHIBIT
S-126 FOR IDENTIFICATION WAS NOW RECEIVED IN EVIDENCE.)

BY MR. EVANS: May I pass it to the jury, Your
Honor?

BY THE COURT: It has been admitted. You can.
(Exhibit S-126 was passed to the jury.)

BY MR. EVANS: Nothing further of this witness,
Your Honor.

BY THE COURT: Is he finally excused?

BY MR. CARTER: Yes, sir.

BY MR. EVANS: Yes, sir.

BY THE COURT: You are free to go. Who do you
have next?

WITNESS EXCUSED

BY MR. EVANS: Randy Keenum.

RANDY KEENUM,
upon being called to testify as a witness by the State of
Mississippi in REBUTTAL, having first been duly sworn,
testified as follows, to-wit:

BY THE COURT: State your name, please.

BY THE WITNESS: Randy Keenum.

DIRECT EXAMINATION BY MR. EVANS:

Q. Good morning, Mr. Keenum.

A. Morning.

Q. Mr. Keenum, where are you employed now?

A. Kilmichael Hospital.

Q. I want to direct your attention back to July of
1996. I will ask you where you were employed at that time?

A. Angelica.

1 Q. What hours were you working?

2 A. From 6:30 to 3:00.

3 Q. All right, that is 6:30 in the morning?

4 A. Yes, sir.

5 Q. What were your duties at that time?

6 A. I was the maintenance man, repaired the sewing
7 machines, whatever.

8 Q. All right. Did you have an occasion to work with
9 a person by the name of Doyle Simpson?

10 A. Yes, sir.

11 Q. Did you see him there that morning?

12 A. Yes, sir.

13 Q. I want you to tell the ladies and gentlemen of the
14 jury if you know specifically where Doyle Simpson was from
15 9:20 to 10:20 that morning?

16 A. Yes, sir. At 9:20 Doyle and I took break
17 together. And we were there to probably a quarter to 10:00,
18 and then later on, he was over there cleaning up on the
19 line. We were together -- you know, I saw him off and on
20 until 10:20.

21 Q. Is there any way possible that he could have left
22 that building from 9:20 until 10:20 without you knowing it?

23 A. No, sir.

24 BY MR. EVANS: Tender the witness, Your Honor.

25 CROSS-EXAMINATION BY MR. CARTER:

26 Q. Now where were y'all located from 9:20 to 10:20,
27 Mr. Keenum?

28 A. Sir?

29 Q. Where were y'all located within the building from

Randy Keenum - CROSS

1 9:20--

2 A. -- We were in the shop.

3 Q. Okay, and how big is the shop?

4 A. It's not very big. From here, this side.

5 (Witness indicating.) It wasn't very big. We had, you
6 know, just a work bench.

7 Q. Was anybody else in there besides you and Doyle?

8 A. I'm not sure. There was another guy there in
9 shipping, but I'm not sure if he was in there or not.

10 Q. Okay, and what were y'all doing specifically?

11 A. Taking break. Eating. More or less eating
12 breakfast.

13 Q. And that's a whole hour; right?

14 A. Well, we, they had two breaks at the plant. The
15 buzzer went off at 9:20. Doyle and I would come, you know--
16 we would take that break. We weren't on production, so we
17 would usually take the other break too. They had two
18 breaks, from 9:20 to 9:30 and from 9:30 to 9:40.

19 Q. Hold a minute. 9:20 to 9:30 is a break time;
20 right?

21 A. Yes, sir.

22 Q. And when is the next one?

23 A. From 9:30 to 9:40. They were ten minute breaks.

24 Q. Okay, so wasn't you essentially back there
25 cheating the company?

26 A. More or less, I guess. You could say that. But
27 now, yeah, I guess we was kind of riding the clock.

28 Q. So y'all were in the break room?

29 A. No, we were in the shop.

Randy Keenum - CROSS

1 Q. In the shop, I'm sorry. On break, but you were
2 eating breakfast, I believe you said; right?

3 A. Yeah.

4 Q. Now Doyle went outside to get his breakfast?

5 A. No. Doyle didn't have no--

6 Q. He didn't go outside to get his breakfast?

7 A. No. Doyle brought his breakfast in with him every
8 morning. We had a refrigerator in the shop -- refrigerator,
9 microwave.

10 Q. So he didn't go outside to get his breakfast. He
11 brought it in with him?

12 A. Uh-huh.

13 Q. Okay. So what else were y'all doing? It took
14 y'all--

15 A. -- oh, we was--

16 Q. -- What kind of breakfast was that, it took a
17 whole hour to eat?

18 A. We sat up there and laughed and talked. You know,
19 I mean this is not something we done occasionally. We done
20 this, you know, this was every day.

21 Q. What else did y'all do besides eat and laugh and
22 talk?

23 A. You mean while we are on break?

24 Q. Yes.

25 A. That was about the size -- I think I smoked back
26 then. I probably smoked.

27 Q. Did you smoke in the building?

28 A. Yeah, we could smoke in the shop back there. We
29 couldn't smoke in the building, but we could smoke in the

Randy Keenum - CROSS

1 shop.

2 Q. Now did Doyle go out at some point to let his
3 window down?

4 A. Not that I know of.

5 Q. And it's your testimony that from 9:20 to 9:30, I
6 believe -- wait, wait. From 9:10-- 9:20 to 10:20 Doyle was
7 in your sight the entire time?

8 A. Yes. When we got through taking break, we went
9 back to work, and Doyle was over there sweeping and, you
10 know, he was custodian, janitor, whichever--

11 Q. -- So he would go to sleep while he was at work?

12 A. Well, I mean while I was emptying the coke
13 machines--

14 BY MR. DE GRUY: --sweep, sweeping--

15 BY MR. CARTER:

16 Q. --Sweeping, I'm sorry. You said sweeping, not
17 sleeping.

18 A. Sweeping, right.

19 Q. Sorry; sorry.

20 A. No, I didn't say sleeping.

21 Q. Okay. And I just want to be clear; I wasn't, I'm
22 not trying to be argumentative, and I just want to be clear.
23 You are saying you saw Doyle; Doyle was in your sight, in
24 your company from 9:20 to 10:20?

25 A. Yeah, that's right.

26 Q. He wasn't out of your sight at any point during
27 that period?

28 A. (Witness shakes his head.)

29 Q. Okay, and he brought his breakfast with him. He

Randy Keenum - CROSS - REDIRECT

1 didn't go outside to get his breakfast, and as far as you
2 know, he didn't go outside to let his window down?

3 A. No. Not as far as I know, he didn't.

4 Q. One moment.

5 (Defense Counsel confer.)

6 BY MR. CARTER: No further questions, Your Honor.

7 REDIRECT EXAMINATION BY MR. EVANS:

8 Q. The closest that you could pin down that you
9 actually saw him the entire time was 9:20 to 10:20; is that
10 right?

11 A. Yes, sir.

12 Q. You don't know what he did before 9:20, and you
13 don't know what he did after 10:20?

14 A. No, sir.

15 BY MR. EVANS: All right. Nothing further, Your
16 Honor.

17 BY THE COURT: Is he finally excused?

18 BY MR. EVANS: Yes, Your Honor.

19 BY THE COURT: You are free to go, sir.

20 BY THE WITNESS: Thank you.

21 WITNESS EXCUSED

22 BY THE COURT: Who do you have next?

23 BY MR. EVANS: Your Honor, the State finally
24 rests.

25 STATE OF MISSISSIPPI RESTS ON REBUTTAL

26

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COURT REPORTER'S CERTIFICATE

STATE OF MISSISSIPPI

COUNTY OF MONTGOMERY

I, Mrs. Linda F. Burchfield, Official Court Reporter for the Fifth Circuit Court District of the State of Mississippi and one of the court reporters in this case, do hereby certify that to the best of my skill and ability, I have reported the proceedings had and done in the trial of STATE OF MISSISSIPPI V. CURTIS GIOVANNI FLOWERS, being No. 2003-0071-CR on the docket of the Circuit Court of Montgomery County, Mississippi, and that the foregoing pages 1-168, 330-416 and 523-534 contain a true, full, and correct transcript of my stenographic notes and tape taken during the testimony on November 29, 2007, December 1, 2007, and December 4, 2007, of said proceedings.

I do further certify that my certificate annexed hereto applies only to the original and certified transcript. The undersigned assumes no responsibility for the accuracy of any reproduced copies not made under my control or direction.

This the 24th day of July, 2008.

Linda F. Burchfield

LINDA F. BURCHFIELD, C.S.R. 1019

Official Court Reporter

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